

(30,301)

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1923

No. 991

AMERICAN RAILWAY EXPRESS COMPANY, PETITIONER,

vs.

GEORGE C. DANIEL

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME
COURT OF THE STATE OF GEORGIA

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[fol. 1]

SUPREME COURT OF GEORGIA

AMERICAN RY. EXPRESS CO.

versus

G. C. DANIEL

[fol. 2] PETITION FOR WRIT OF CERTIORARI WITH NOTICE AND
PROOF OF SERVICE—Filed March 23, 1923

To the Supreme Court of Georgia:

The petition of the American Railway Express Company respectfully shows:

1

That there came on for determination at the October Term, 1922, of the Court of Appeals of Georgia, a case numbered 13603, in which your petitioner, the American Railway Express Company was the plaintiff in error, and one George C. Daniel was defendant in error, being a writ of error from Madison Superior Court, and the decision of the Court of Appeals therein was adverse to your petitioner.

2

This petitioner is dissatisfied with the decision and judgment of the Court of Appeals and the issues in said cause involve matters of gravity and importance, and this petition is for the purpose of obtaining the writ of certiorari from the Supreme Court of Georgia in the cause aforesaid.

As an exhibit to this petition, petitioner furnishes herewith a certified copy of the entire record of the case in the Court of Appeals, including a copy of the judgment and of the opinion of the Court of Appeals.

3

Petitioner now proceeds to set forth a succinct abstract and statement of the matters involved and to specify plainly the decision complained of and the alleged errors committed:

Your petitioner is a common carrier of express doing both an intrastate and interstate business. On August 25th, 1920, it received for transportation in interstate commerce from one Mrs. J. S. Daniel, at Comer, Georgia, a package consigned to her son (the plaintiff) at Baltimore, Maryland. The shipment was lost in transit. [fol. 3] At the time it was delivered to your petitioner, as a common carrier thereof, it issued its written receipt therefor in which the value of the package was stated to be \$50.00. This receipt was delivered to and accepted by the shippers' agent who made, and was authorized to make, the shipment for her, and it became the contract between the parties hereto. The undisputed evidence showed that

the carrier maintained alternate rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property. It also offered in evidence a certified copy of its tariffs and classifications of file with the Interstate Commerce Commission, in which were contained its schedule of rates, fares and charges, but this piece of documentary evidence was not admitted by the trial Court who on his own motion ruled it out as immaterial.

The plaintiff proved that the actual value of the property was \$100.00 and a verdict was rendered in his favor for this amount. Your petitioner admitted the loss of the package and its liability therefor, but insisted that the plaintiff was, under the facts and the controlling Federal law, estopped to recover more than the written declared value at time of shipment. It, therefore, admitted liability to the extent of \$50.00.

In its decision sustaining the trial judge, the Court of Appeals has, we respectfully submit, applied the Georgia rule of liability as to an intrastate shipment as exemplified in *Bailey vs. American Railway Express Company, — Georgia, — (113 S. E. 551)*, and has failed to apply the Federal rule of liability as laid down by the United States Supreme Court in cases which begin with the *Croninger case* (226 U. S. 491) and culminate in the case of *American Railway Express [fol. 4] Company vs. Lindenburg*, 43 Sup. Ct. Rep. 206. While recognizing the fact that interstate shipments are governed by the Federal law, the Court of Appeals gives to the Cummins Amendment, the statute applicable to the rights and liabilities of the parties to this shipment, a construction different from that which has been given it by the United States Supreme Court, and the rule of law announced by the Court of Appeals as governing the rights and liabilities of the parties to an interstate shipment is the rule applied by the Georgia Supreme Court to an intra-state shipment in Georgia. We need hardly add that the two rules of law conflict.

The question decided by the Court of Appeals and now presented to this Court for a review may be stated thus:

In the case of an interstate shipment, where the carrier maintains alternate rates dependent upon the value declared in writing by the shipper, or agreed upon in writing as the released value of the property, and the receipt issued by the carrier, and accepted by the shipper or his agent, (though signed by neither) contains a statement or declaration that the property is of the value of \$50.00 and the carrier applies a rate thereto corresponding to the value so declared, is the shipper, in case of loss estopped to recover more than the value so declared, or will the carrier, in maintaining its limited liability defense, have to show that the \$50.00 value so declared was the result of an agreement knowingly and understandingly made for the purpose of securing the lower rate of transportation?

The Court of Appeals in its opinion handed down in the case sub-judice, held that the recital or declaration of value contained in the receipt given under the circumstances narrated herein was not, with-[fol. 5] out more, sufficient to constitute an agreement knowingly and understandingly made for the purpose of securing a reduced rate of transportation. This is true, it is said, because it was never brought home to the shipper at the time of making the declaration of value that by doing this he was securing the benefit of a lower alternate rate, and that it is necessary, in order to bind the shipper that he should, in making the declaration, have known and understood that in so doing he was availing himself of a reduced rate corresponding to the value thus declared. Recovery for full actual loss was therefore allowed.

It is this decision of the Court of Appeals which your petitioner specifies as being error and your petitioner alleges it is error because it manifestly disregards the binding United States Supreme Court cases holding directly to the contrary. It fails to consider that doctrine announced so many times by the United States Supreme Court and which finds its latest expression in the Lindenburg case (*supra*) that "the shipper is conclusively presumed to know the rates."

6.

In the body of the opinion of the Court of Appeals says:

"A value arbitrarily placed by the carrier upon the property presented for transportation, even though the reduced rate determinable by such valuation is charged the shipper, which is not the result of a choice freely and understandingly made by the shipper for the purpose of securing the reduced rate, will not amount to such a declared or agreed valuation, based upon a reduced rate charged, as will operate to relieve the carrier from liability for the full actual loss or damage."

It is most respectfully submitted to this Court that this is in direct conflict with the law of the Federal Courts and the United States [fol. 6] Supreme Court. It is in direct conflict with the very language of the Second Cummins Amendment (Aug. 9, 1916) and applies the State rule of carrier liability to an interstate carriage. It considers the arbitrary valuation doctrine as being applicable in determining a carriers' liability on the loss of an interstate shipment. Consider also the language which follows the quotation above made. Here is an elaboration of the rule announced in the headnote of the opinion and which we drew to the attention of this Court in paragraph 5 hereof, but at the same time the doctrine of "arbitrary or bona fide valuation" is again brought forward and this State doctrine is made to govern the rights and liabilities of the parties to this interstate shipment.

Petitioner insists that the points raised in this certiorari are well within the rules laid down in the case of Central of Georgia Ry. Co. v. Yesbik, 146 Ga. 620, in that there is here involved a question of gravity and importance, for the rights and liabilities of a carrier

of an interstate shipment are of sufficient magnitude to warrant a determination by this Court. It is very respectfully submitted that to allow this decision of the Court of Appeals to stand is to permit the Federal rule applicable to become beclouded and will result in decisions, which, following the case at bar, will do violence to the rights of the carrier of interstate shipments. It is urged that "the writ of certiorari should be granted, that the whole question may be maturely considered and decided on full argument."

A brief for petitioner in certiorari is submitted herewith.

Due notice of the intention to file this petition for certiorari has been given to the Clerk of the Court of Appeals as will appear from [fol. 7] the transcript of the record accompanying this petition.

The costs required by the rules of this Court have been paid, and notice of the date of the filing of this petition, together with a copy of the petition and of the brief will be served on counsel for respondent in accordance with the rule.

Wherefore, petitioner prays that the writ of certiorari be granted by this court in order that the errors complained of may be considered and corrected, it being insisted by your petitioners that each and all of the rulings of the Court of Appeals mentioned above are erroneous.

Alston, Alston, Foster & Moise, Clarence E. Adams, Attorneys for Petitioner.

P. O. Address: Alston, Alston, Foster & Moise, Atlanta, Ga.; Clarence E. Adams, Danielsville, Ga.

[File endorsement omitted.]

[fol. 8]

[Title omitted]

PROOF OF SERVICE—Filed March 28, 1923

Due and legal service of copy of the petition for certiorari and copy of the brief of petitioner for certiorari acknowledged; notice of the date of filing of said petition for certiorari also acknowledged. All other and further notice and service waived this 26 day of March, 1923.

Berry T. Moseley, Attorney for George C. Daniel, Defendant in Certiorari.

[File endorsement omitted.]

[fol. 9]

[Title omitted]

NOTICE—Filed March 6, 1923

To the Honorable Logan Bleckley, Clerk of the Court of Appeals of Georgia:

Notice is hereby given you, within ten days after filing of the judgment in the above stated case, that it is the intention of the plaintiff in error, the American Railway Express Company, to apply to the Supreme Court for a writ of certiorari in said case. This notice is given pursuant to the statute and rules of court in such cases made and provided.

This 6th day of March, 1923.

Alston, Alston, Foster & Moise, Attorneys for American Railway Express Company, Plaintiff in Error.

[File endorsement omitted.]

[fol. 10]

IN SUPERIOR COURT OF MADISON COUNTY

BILL OF EXCEPTIONS—Filed April 29, 1922

Be it remembered that on the 25th day of July, 1921, at the regular July term of the Superior Court of Madison County, before the Honorable Walter L. Hodges, Judge, presiding, there came on to be tried the case of Geo. C. Daniel, against the American Railway Express Company, Inc., the same being a suit for breach of contract. Said suit was filed on the 15th day of February, 1921, and at the regular March term, 1921, defendant filed answer to said suit.

Said case proceeded to trial at the regular July Term, 1921 of said court, on the date above stated, a jury was stricken, evidence was introduced for the plaintiff and defendant, and after argument of counsel and charge of the court, the jury rendered a verdict in favor of the plaintiff in the sum of one hundred dollars, and judgment was duly entered thereon, all this appearing in the record.

The defendant thereafter in regular course and within the time prescribed by law filed its motion for new trial, with the evidence duly approved by the court, and the charge of the court properly certified. Said motion came on for a hearing on the 4th day of April by agreement and order, 1922, and the recitals of facts in the several grounds of the motion were approved, and the said motion was by court overruled on each and all of the grounds therein stated.

To this judgment of the court the defendant excepts and now excepts and assigns error thereon, and says that the court erred in overruling said motion for new trial on each and all of the grounds therein stated in both the original motion and the amended grounds filed thereto.

The defendant specifies the following portions of the record in said case as material to a clear understanding of the errors in this bill of exceptions, to-wit:

1. The original petition in said case, filed on the 15th day of Feb. 1921.
- [fol. 11] 2. The original plea and answer of defendant filed on the 7th day of March, 1921.
3. The motion for new trial filed by defendant on the 26th day of July, 1921.
4. The amended grounds for new trial filed on the 9th day of March, 1921.
5. The brief of evidence, with the order and entries thereon filed on the 9th day of March, 1922.
6. The charge of the court with the approval of the Judge thereon dated the 9th day of March, 1922, and filed on the 9th day of March, 1922.
7. The verdict of the jury in said case, rendered on the 25th day of July, 1921.
8. The judgment of the court on said verdict, dated the 25th day of July, 1921.
9. The judgment of the court certifying the grounds and the amended motion dated the 9th day of March, 1922, and the order of the court finally overruling the motion for new trial dated on the 4th day of April, 1922.
10. The entries of filing of each and all of the record or parts thereof, above specified to be entered and transmitted in the proper order.

And now within the time provided by law, and within thirty days of the entry of the judgment overruling said motion for new trial comes the defendant and tenders this his bill of exceptions and prays that the same may be certified as provided by law in order that the errors complained of may be considered and corrected by the Court of Appeals of Georgia.

Robert C. Alston, P. O. Address Atlanta, Ga.; Clarence E. Adams, P. O. Address Danielsville, Ga., Attorneys for Plaintiff in Error.

[fol. 12] GEORGIA,
Madison County:

JUDGE'S CERTIFICATE

I do certify that the foregoing bill of Exceptions is true, and specifies all of the evidence and all of the record material to a clear under-

standing of the errors complained of; and the Clerk of the Superior Court of Madison County is hereby ordered to make out a complete copy of such parts of the record in said case as are in this Bill of Exceptions specified, and certify the same as such, and cause the same to be transmitted to the Court of Appeals, that the errors alleged to have been committed may be considered and corrected.

This 28th day of April, 1922.

W. L. Hodges, J. S. C., Northern Circuit.

Clerk's Office, Superior Court of Madison County, Ga., April 29, 1922

CLERK'S CERTIFICATE

I hereby certify that the foregoing is the true Original Bill of Exceptions, filed in this office, in the case therein stated, and that a copy thereof has been made and is now on file in this office.

Witness my signature and the seal of said Court hereto affixed, the day and year last above written.

Wm. D. Meadow, Clerk.

[File endorsement omitted.]

[fol. 13] Due and legal service of the within Bill of Exceptions and Writ of Error acknowledged; copy and all other and further notice and service waived.

This April 29th, 1922.

Berry T. Moseley, Attorney for G. C. Daniel, Dft. in Error.

MADISON SUPERIOR COURT

[Title omitted]

PETITION

To the Superior Court of said County:

The petition of George C. Daniel, citizen of said State shows the following facts:

1

That the American Railway Express Company, Inc. is a corporation, and has an agent and a place of business and is doing business in said County of Madison said State.

2

That said defendant Company is indebted to your petitioner in the sum of One Hundred and Fifty Two & 50/100 (\$152.50) principal with interest on the same from August 25th, 1920 at 7% per annum for the reasons hereinafter set out.

[fol. 14] That Mrs. J. S. Daniel, petitioner's mother, delivered to the said defendant American Railway Express Company, at its office at Comer, Ga., in said County, for petitioner a package for shipment to petitioner at Baltimore, Maryland, and to be transported by said Company, consisting of the following articles, and of the value set opposite each article:

One suit of clothes of the value of.....	\$40.00
One overcoat " " " "	40.00
One raincoat " " " "	15.00
One cap " " " "	2.00
7 Suits of Underwear " " " "	21.00
One pair shoes " " " "	3.50
2 pair socks " " " "	2.50
1 Wool Sweater " " " "	4.00
1 Silk Muffler " " " "	5.00
4 Wool Shirts " " " "	16.00

Total amount due..... \$152.00

That while said articles were in the possession and control of defendant, they were lost by said Company, and the same have never been delivered to petitioner, although demand for delivery of the same has been made of said defendant company and delivery refused.

That is was no fault of said petitioner that said articles herein enumerated were lost by said company, and that said company was negligent in losing the same, and in not delivering said articles as they agreed to do when demanded.

That said company has admitted its inability to deliver said articles delivered to it for transportation from Comer, Georgia, to Baltimore, Maryland, and thereby has injured and damaged your [fol. 15] petitioner said amounts. That the articles herein enumerated was the property of petitioner at the time of said delivery to said defendant and the time same was lost by defendant and the same was to be delivered to petitioner at Baltimore, Maryland, where petitioner at that time resided.

That he is now a resident of Madison County, Ga.

That payment for said articles has been demanded of said defendant and payment of the same has been refused.

Wherefore petitioner prays that process do issue directed to the defendant American Railway Express Company, Inc., requiring it to be and appear at the next term of this court, to be holden on the first Monday in March, 1921 to answer your petitioner's complaint.

Berry T. Moseley, Petitioner's Attorney.

STATE OF GEORGIA,
Madison County:

[Title omitted]

Complaint. Suit on Act

SUMMONS AND SHERIFF'S RETURN—Filed February 15, 1921

To the sheriff of said county and his lawful deputies, Greeting:

The Defendant American Railway Express Company, Inc., is hereby required personally or by attorney, to be and appear at the Superior Court, to be held in and for said County on the First Monday in March next, then and there to answer the Plaintiff's demand in an action of complaint, as in default thereof the Court will proceed as to justice shall appertain.

Witness the Honorable W. L. Hodges, Judge of said Court, this 15 day of Feby., 1921.

Wm. D. Meadow, Clerk.

[File endorsement omitted.]

[fol. 16] GEORGIA,
Madison County:

I have this day served the defendant C. H. Barns, Agent with a copy of the within process, petition, and order in person.

This 16th day of Feb., 1921.

W. H. Hall, Sheriff.

IN SUPERIOR COURT OF MADISON COUNTY

[Title omitted]

ANSWER—Filed March 7, 1921

And now comes the defendant, and for plea and answer states the following facts, to wit:

Paragraph one of plaintiff's petition is admitted.

Paragraph 2 of the petition is denied, except this defendant admits its liability to the extent of \$50.00—liability for loss being limited to \$50.00 by reason of the special rate charged and specified in the contract of shipment, copy of which is hereto attached and made a part hereof.

Answering paragraph three, defendant admits that a package was delivered to its agents by Mrs. J. S. Daniel, but as to what said package contained defendant can neither admit nor deny for the want of sufficient information, defendant's liability in any event being limited to \$50.00 as above stated.

The allegations of paragraph four are admitted, except this defendant is ready and willing to pay the amount due under said contract, to wit the sum of fifty dollars, and has tendered and now tenders said amount to plaintiff.

[fol. 17]

In answer to the fifth and sixth paragraph of the petition, defendant admits that the package was never delivered to the consignee, but denies that its liability exceeds the sum of fifty dollars.

Paragraph seven is admitted.

Paragraph eight is admitted, except this defendant admits its liability in the sum of fifty dollars which it stands ready to pay to plaintiff.

Clarence E. Adams, Atty. for Defendant.

[File endorsement omitted.]

[fol. 18]

MADISON SUPERIOR COURT

Before Hon. W. L. Hodges, Judge of the Superior Court of the Northern Circuit

[Title omitted]

BRIEF OF EVIDENCE

Appearances: Judge B. T. Moseley for the Plaintiff; C. E. Adams, Esq., for the Defendant.

Mrs. J. S. DANIEL, a witness for the plaintiff, being duly sworn, testified as follows:

Direct examination by Judge Moseley:

My name is Mrs. J. S. Daniel, and George C. Daniel, is my son. In August, 1920, he was living in Baltimore, Maryland, but in February, 1921, he resided in Danielsville. About August 25, 1920, I delivered or had delivered to the American Railway Express Company a package addressed to George C. Daniel at Baltimore, Maryland.

There was a suit of clothes in the package, I don't know what the suit cost but I think it was worth \$50.00. I tried to be conscientious in making out the list, I don't want more out of the Express Company than I can conscientiously ask. There was an overcoat worth \$40.00. It was a dress suit overcoat, and that is what it was worth at the time I delivered it to the Express Company. There was a cap which was worth \$2 and seven suits of underwear which was worth \$21.00 and more, and a pair of shoes for \$3.50. They were worth that because they were brand new shoes, and there was a wool sweater worth \$4 and a silk muffler worth \$5 and four wool shirts amounting to \$16. All of this makes a total of \$152.50. I made arrangements with Mr. Fowler, the mail man, and he carried them to Comer to the express office there. When I gave them to Mr. Fowler I had no idea of them being lost, I said, Here is an express package I want to ship to my son in Baltimore, please deliver them to Mr. Barnes and tell him to send me the amount of the express, [fol. 19] and I want them insured, and send me the amount and I will settle with you for carrying them, and he said, About how much, and I said I hardly know, but they are right around \$200, so Mr. Fowler, as well as I remember, carried them off on the morning mail. The next day sometime Mr. Fowler come back and I asked him what I owed him and the Express Company for the insurance and also for the express, I was paying the express to Baltimore, and he said \$1.00, and I thought that was pretty small and I said, that is too small, and said, Mr. Barnes told me that he insured that package for Fifty Dollars, and I said, Why Mr. Fowler, one suit of clothes is worth that, but I had no idea of it being lost. I did not agree with the Agent of the Express Company at

Comer, or with Mr. Fowler, the man who carried them, to insure them at that value.

Counsel for defendant stated: I object to this testimony because what we are concerned in is what the agent told the Express Company, and what the witness told Mr. Fowler would not be binding on us and is not admissible and I object to the testimony unless she can show that he exceeded the scope of his authority.

The Court: I will allow her to testify as to what she authorized him to do.

I told Mr. Fowler that there was a package of clothing that I wanted shipped to my son in Baltimore, and I said you tell Mr. Barnes to send me the amount, I want it insured and send me the amount of the insurance, and I will send him the money, and I will settle for your trouble, and he said how much, and I said I don't know, right around two hundred dollars. The reason I did not say the amount, I had been informed that the Express people wouldn't insure a package for its full value and I was leaving it to Mr Barnes, I said tell him to put a fair valuation." Mr. Fowler [fol. 20] will remember me saying that, I don't know what he told Mr. Barnes, but he will remember me saying that. I did not authorize Mr. Fowler to place a valuation of \$50 on that package.

No cross-examination.

Plaintiff rests.

C. H. BARNES, a witness for the defendant, being duly sworn, testified as follows:

Direct examination by Mr. Adams:

I am agent of the American Railway Express Company at Comer. I know about the package that Mrs. Daniel has sued for. Mr. Fowler, the mail man delivered this package to me, but he has no connection with the American Railway Express Company. Mr. Fowler brought a package and said I have a package here, and I said, What is it, and he said, It is a package and I looked at it and it was addressed to Baltimore, and I got my receipt to make it out and I said, "What is the value, and he said, She didn't say, and I don't know just what, and I said Will \$50 cover it, and he said, I don't know, he said, I guess so. I made out the receipt I told him whatever you say I will put the valuation. He didn't make any response. I said, Will \$50 cover it and he said, I guess so. I didn't know what was in the package, he just said there was some clothing in it, and I didn't know the value of the clothing. I didn't have any interest in placing it at \$50. Above \$50 there is an additional cost, and I said If it is more I can put it at whatever you say and if he had said \$500, I would have done that. The reason I put it at \$50 was because there was no additional cost over \$50 to the shipper. The reason that I issued this receipt for \$50 was because

he said he guessed \$50 would cover it, he never made any stipulated price.

If that package had been worth \$75 there would have been more express, but if it had been \$200 it wouldn't have been four times [fol. 21] above \$50, it would be ten cents in addition. It was nothing to me, if he had said \$500 I would have cut it down, I just asked him if that would cover it, I ask folks what packages are worth to find out, and my question in this case was to find out the value. I issued a receipt. In regard to that being the original receipt, that is my signature. When I issued this receipt I turned it over to Mr. Fowler. It was not returned to me before filing a claim. In regard to hearing no more about this shipment until the goods were lost, they asked me to trace it and I tried to trace it. That is a copy of the original, there are four copies that I make, and the top copy is the one you tear off and give to him. This is not the one I gave to him. I have carbons. I make four copies at the same stroke of the pen. This is not one of the copies that I made at the time.

Cross-examination by Judge Moseley:

This is not the original receipt, this was not made at the same time the original was made, when she asked me for a copy of the receipt, the original was given to Mr. Fowler. When I asked Mr. Fowler the value of this package he told me that Mrs. Daniel didn't give him any value. Mr. Fowler didn't put a stipulated amount on it, and I asked him if \$50 would cover it and he said he guessed so, he didn't say that it would. I put that \$50 in the receipt under the conversation between me and Mr. Fowler. No stipulated amount was given to me at all. In regard to him making no reply when I asked him to value it, he said that he didn't know, he said it had some clothing in it.

Redirect examination by Mr. Adams:

This receipt is a duplicate this is a copy, it is not the original receipt. I give this one as a copy. I don't know where this come from it is not my handwriting. That come from the office. I got [fol. 22] that from the record. There is one that goes to the package, the top copy goes to the shipper and the other to my office files and I made this from the office files, the original was given to Mr. Fowler. This (indicating) is a correct copy.

NEAL COMPTON, a witness for the defendant, being duly sworn, testified as follows:

Direct examination by Mr. Adams:

I remember the time that Mr. Fowler delivered a package to the express company at Comer for Mrs. Daniel. I was present. Mr.

Fowler brought the package in and he told Mr. Barnes where he wanted to send it, and he hold me to weigh it and I weighed it and brought it back, and Mr. Barnes started to make his receipt, and he said, What is the value, and Mr. Fowler said, I don't know, I think I asked him what was in it, and he said some clothes, and Mr. Bond asked him would \$50 do, and he said, he guessed so,, and Mr. Bond said I will value it at anything you say, and Mr. Fowler said \$50 will do, I reckon

Cross-examination by Judge Moseley:

I said that Mr. Fowler said he didn't know what it was worth and said that she didn't say. The \$50 was a suggestion of Mr. Barnes and not Mr. Fowler's.

GUS FOWLER, a witness for the defendant, being duly sworn, testified as follows:

Direct examination by Mr. Adams:

I delivered a package to Mr. Barnes, at Comer. I don't remember exactly what happened at the time, I delivered that package, Mrs. Daniel sent a box by me one evening, and I asked her [Mrs. Daniels] what was the value of it and she said I haven't got my list made out of the clothes, and I said How about \$50 or \$75 or something like that, and she said, I guess so I understood her to say that, and when I got to Comer I told Mr. Barnes the same thing [fol. 23] I understood, I don't remember exactly what Mr. Barnes said to me when I delivered the package to him. He asked me what it was worth, and I told him about the same thing, \$50 or \$75, or \$100. I don't remember exactly how it was now, In regard to agreeing for it to be fixed at \$50, I was in a hurry and I left it that way, but I accepted the receipt and give it to Mrs. Daniels, and I never heard anything more about it until the package was lost.

Cross-examination by Judge Moseley:

I don't remember whether it was the next day or not that I give her the receipt. In regard to losing it, I don't remember about that, I either left it in my pockets or lost it, I didn't give her the first receipt, she asked me for it. I don't remember when I come back that she told me she wanted it insured. In regard to her telling me she wanted it insured for, and that it was worth \$200, I understood her to say that she didn't have her list made out. I don't remember whether I told her that Mr. Bond insured it for \$50 or not, I had lost the receipt when she first called for it and I said I don't see it in my pocket and I will look it up, and I went back and told Mr. Bond and he said I will give you the first receipt, he said I will give you the original. In regard to Mrs. Daniel telling me that there was one suit of clothes in there worth \$50, I don't remember whether she told me what was in there. This was somewhere about February a

year ago. In regard to me not authorizing Mr. Barnes to put a fifty dollar valuation on this package. I told him like Mrs. Daniel told me.

Redirect examination by Mr. Adams:

I lost the receipt, or left it lying out on the desk, and it got lost, and I didn't find it, and I got a copy from Mr. Barnes, and I gave the copy to Mrs. Daniel.

[fol. 24] Mr. Adams: I tender in evidence this schedule of rates filed by the Common Carrier in this case with the Interstate Commerce Commission. The Supreme Court decisions are that these schedules filed with the Interstate Commerce Commission are binding upon all parties. It is the rate they are allowed to charge, when they file it with the Commission, then all parties are bound by it. It is necessary to show that this schedule of rates is filed with the Interstate Commerce Commission, in order that it may be shown that shippers are bound by these rates.

The Court: I do not see how that would illustrate anything. It is a question of liability, whether or not the company is liable for a valuation beyond the insured value of fifty dollars. That particular thing is not in issue, and the schedule is not admitted.

Gus FOWLER, recalled, testified as follows:

Direct examination by Mr. Adams:

The receipt that Mr. Barnes gave me at the time that I delivered this package to him, I either left it lying on the desk or lost it, I don't reckon I gave it to anybody, I never did find it, I must have lost it.

The Court: I will allow you to put in the duplicate.

Cross-examination by Judge Moseley:

I got a duplicate and I did not lose that. Mrs. Daniel called for the receipt. I felt in my pocket, and did not have it, and I went to Mr. Barnes first.

C. H. BARNES, recalled, testified as follows:

Direct examination by Mr. Adams:

When Mr. Fowler came back and called for the receipt, I issued a copy of the receipt, I took my original record and made a carbon copy, I did not attempt to issue an original. And made a carbon copy. I didn't attempt to issue original. It was just a copy to show what the original contained. This (indicating) is a copy of

[fol. 25] the original. I made the receipt from the office copy. The writing is all the same, but the print is different. The contract is the same though.

Cross-examination by Judge Moseley:

Mrs. Daniel never signed that receipt, and I did not ask her to sign it, and Mr. Fowler did not sign it for her.

Redirect examination by Mr. Adams:

I mean this receipt is different sized type. That copy is the same thing I gave Mrs. Daniel, and covers the same identical thing.

Mr. Adams: We offer that copy of the original express receipt.

The Court: I don't think that is admissible, he can refresh his memory from any memorandum that he made, and after refreshing his memory testify as to the contents.

Witness: Fifty dollars was all the valuation placed on that package. I made that memorandum. The receipt read, Comer, Ga., August 25th, One Package. Mr. Fowler brought it from Mrs. Daniel, and the valuation placed on it was fifty dollars, and that is all I can recall. The receipt was signed by me, I gave him the original.

Recross-examination by Judge Moseley:

Mrs. Daniel did not sign the receipt and she in no way entered into any contract with me, but the contract I made was with Mr. Fowler, just like I stated. We offer this copy of the express receipt in evidence as it is shown that the original was lost.

Objected to by plaintiffs counsel, because it is a copy.

The Court: Objection sustained. If the original is lost, I will allow its contents to be proven by parol.

Defense rests.

Mrs. J. S. DANIEL, being recalled, testified as follows:

Direct examination by Judge Moseley:

In regard to placing a value on the package of \$50.00, \$75.00 or [fol. 26] a hundred dollars as stated by Mr. Fowler, I did not, if I had known how much I could have been allowed to place on that, as I stated before, I did not know how much the company would allow me to place on it, and I gave instructions to Mr. Fowler to tell Mr. Barnes to put a fair valuation on it. I told Mr. Fowler it was around \$200.00 in value. When Mr. Fowler told me the amount that he had placed on the package I was very much — it got away with me, and said, why Mr. Fowler, that would not pay for one suit of

clothes, but I dismissed it from my mind, as I hoped it would not be lost.

Evidence in.

The Court: It is conceded under the evidence that this package was insured for \$50.00.

Judge Moseley: That is a disputed point, that is the only point in it.

IN SUPERIOR COURT OF MADISON COUNTY

STIPULATION AND ORDER SETTLING BRIEF OF EVIDENCE—Filed March 9, 1922.

We agree that the foregoing nine pages, is a true and correct brief of the evidence adduced in the trial of the case of Geo. C. Daniel vs. American Railway Express Company, therein referred to. This 9th day of March, 1922.

Berry T. Moseley, Counsel for Plaintiff. Clarence E. Adams, Counsel for Defendant.

Approved. — — —, Judge Superior Court, N. J. C.

[fol. 27] The foregoing nine pages, constituting the brief of evidence, in this case, and the four pages constituting the charge of the court, is hereby approved as a true and correct copy of the brief of the evidence and charge of the court, as produced upon the trial of the above stated case. Let the same be filed as part of the record herein.

This 9th day of March, 1922.

W. L. Hodges, J. S. C., Northern Circuit.

[File endorsement omitted.]

IN MADISON SUPERIOR COURT

[Title omitted]

CHARGE OF COURT—Filed March 9, 1922

GENTLEMEN OF THE JURY: George C. Daniel brings suit against the American Railway Express Company for damages in the sum of \$152.50. The plaintiff alleges in his petition, that Mrs. J. S. Daniel delivered to the defendant company certain articles of merchandise, or personal property, which are fully set forth in the petition by exhibit, which is attached to the petition aggregating in

value the sum of \$152.50. These goods were delivered to the defendant company for the purpose of being shipped from Comer, Georgia, to Baltimore, Maryland, and that they were lost or destroyed by the defendant company, and that on demand the defendant company refuses to deliver the goods or pay the value thereof, and therefore the plaintiff brings his suit for the purposes of recovering the value of these goods.

The defendant comes into court and denies it is liable as to the [fol. 28] amount of \$152.50. They admit receiving the goods, and they admit they were lost or destroyed, and that they are liable under a receipt issued by the company tendered to the plaintiff wherein it is stipulated in case of loss or destruction of the goods shipped the company would be liable to the amount of \$50 only. That is in substance the defendant's plea, is that correct, Mr. Adams?

The burden is on the plaintiff to establish his right to recover by the preponderance of the testimony. By preponderance of the testimony is meant that superior weight of testimony which while not enough to wholly free the mind of a reasonable doubt. Yet it is sufficient to incline the fair and impartial mind to one side of the issue rather than to the other. In determining on which side of the case the preponderance of the testimony lies, you can look to the witnesses testifying, their demeanor on the stand, their interest or want of interest in the result of the trial of the case, their opportunity of knowing what they testify about, their credibility or want of credibility so far as the same may legitimately appear from the trial of the case, together with all the attending circumstances proven on the trial of the case. You can also consider the number of witnesses, although it does not necessarily follow that the preponderance lies with the great number of witnesses.

As law applicable to this case, I give you in charge the following. The principal is bound by all the acts of his agent within the scope of his authority, if the agent exceeds his authority, the principal cannot ratify in part and repudiate in part, he must adopt either the whole or none. The agent's authority will be construed to include all necessary and usual means for effectually executing it. Private instructions or limitations not known to persons dealing with a general agent cannot effect them. In special agencies for a particular purpose, persons dealing with the agent should examine his authority.

[fol. 29] I charge you as a matter of law if Mrs. Daniel in making this shipment instructed the mail carrier to insure this property and put any special limitation as to the amount of insurance, or rather gave her agent special instructions in regard to the amount of insurance, that if the agent violated these instructions and the express company had no knowledge of these express limitations or instructions, then the express company should not suffer for the violation of such instructions, but the loss or injury, if any would fall upon the principal, who was Mrs. Daniel. On the other hand I charge you if Mrs. Daniel gave her agent the mail carrier special instructions in regard to the insurance of this property and the express company had knowledge of these limitations or restrictions, then it would be

bound, provided through violations of these restrictions loss should be sustained. The express company would be liable and should suffer the loss and not the shipper on account of the violation of the instruction. Whether or not Mrs. Daniel had an agent employed or solicited some one to represent her in the shipping of the articles is a question for you to determine, also what instructions were given him, what limitations were made, and whether or not the express company had any knowledge of these special instructions or restrictions are questions of fact for you to determine from the testimony in the case.

I charge you if you believe from the testimony in this case that the plaintiff through herself or a lawfully constituted agent entered into an agreement with the defendant company fixing the valuation of the property shipped, and which was a basis for fixing the charges or for any other consideration fixed a valuation on the property in question, then I charge you that the plaintiff in this case would be restricted or limited to the valuation fixed by such agreeemnt.

[fol. 30] On the other hand I charge you if there was no agreement entered into between the plaintiff by herself or through her legally constituted agent and the defendant express company, by which the value of the property in question was fixed, but the express company put an arbitrary limitation upon these goods by its employees, and damages arose from the loss of the goods in question, then and in that event the defendant in this case would be liable for the actual proven value of the goods in question regardless of any limitation of value that might be placed upon these goods by the defendant company alone in any receipt that it might have issued. Now whether or not any such agreement was entered into by both parties, that is, the plaintiff in this case, and the defendant, or whether or not there was an arbitrary value put upon this property by the defendant company and a receipt issued by it is a question of fact for you to determine from all the evidence in the case.

If under the rules of law given you in charge you believe from the testimony in this case that Mrs. Daniel through herself or agent entered into a contract as explained to you in my charge fixing the valuation of the property in question, then she could only recover the amount fixed by such contract. On the other hand if you do not believe any contract was entered into by Mrs. Daniel, or by herself or her agent and an arbitrary valuation was placed upon the goods in question by the defendant company alone, then the plaintiff would be entitled to recover whatever the proven value of the goods are.

I also charge you if there was no contract fixing the valuation or no receipt fixing the valuation, or no agreement of any kind or memorandum of any kind fixing the valuation, the plaintiff would be entitled to recover the proven value of the property. If you find for the plaintiff let your verdict specify the amount. We the jury, find for the plaintiff so many dollars. If you find for the defendant, let your verdict specify. We, the jury find for the defendant. I will modify the forms of the verdict to some extent. In any event you should find \$50, as the amount admitted in court by the defendant, but if you find a larger amount for the plaintiff, so specify

it. But in any event you should find to the amount of \$50, that is the amount admitted by the express company to be due as their liability.

IN MADISON SUPERIOR COURT

VERDICT AND JUDGMENT

We the jury find for the plaintiff \$100.00.

July 25, 1921.

C. P. Griffeth, Foreman.

Whereupon it is considered ordered and adjudged by the court that the plaintiff G. C. Daniel, do have and recover judgment against American Express Company the defendant the sum of \$100.00 principal with interest on the same from this date at 7% per annum and the further sum of \$— costs of suit.

Judgment signed this July 25th, 1921.

W. L. Hodges, Judge S. C., N. C. Berry T. Moseley, Atty. for Plaintiff.

IN MADISON SUPERIOR COURT

[Title omitted]

Verdict and Judgment for Plaintiff at July Term, 1921, of Madison Superior Court, on 25 Day of July, 1921

MOTION FOR NEW TRIAL

The defendant being dissatisfied with the verdict and judgment [fol. 32] in said case comes during said term of the court before the adjournment thereof, and within thirty days from said trial, and moves the Court for a new trial, upon the following grounds to wit:

First. Because the verdict is contrary to evidence and without evidence to support it.

Second. Because the verdict is decidedly and strongly against the weight of evidence.

Third. Because the verdict is contrary to law and the principles of justice and equity.

Whereupon, he prays that these his grounds for a new trial, be inquired of by the Court, and that a new trial be granted him.

Clarence E. Adams, Attorney for Movant.

IN MADISON SUPERIOR COURT

ORDER TO SHOW CAUSE

Read and considered. It is ordered that the American Ry. Ex. Co., show cause before me at Danielsville instanter at — o'clock on the 26 day of July, 1921, why the foregoing motion should not be granted. It is further ordered that the plaintiff be served with a copy of this motion and order, and that this order act as a supersedeas until the further order of the court.

This 26th day of July, 1921.

W. L. Hodges, Judge of Northern Judicial Circuit.

IN MADISON SUPERIOR COURT

ORDER SETTING CAUSE FOR HEARING OF MOTION FOR NEW TRIAL—
Filed July 26, 1921

The defendant having made a motion for new trial in said case, on the grounds therein stated, and said grounds having been approved by the Court, and it appearing that it is impossible to make out and complete a brief of the testimony in said case before adjournment of Court, it is ordered by the Court that said motion be heard and determined on the 5th day of Sept. 1921 at Danielsville, and that movant may amend said motion at any time before the final hearing.

If, for any reason, said motion is not heard and determined at the [fol. 33] time and place above fixed, it is ordered that the same shall be heard and determined at such time and place in vacation as counsel may agree upon and upon failure to agree, then at such time and place as the presiding Judge may fix on the application of either party, of which time and place the opposite party shall have at least five days' notice.

If for any reason, this motion is not heard and determined before the beginning of the next term of this court, then the same shall stand on the docket until heard and determined at said term or thereafter.

It is further ordered that the movant have until the hearing, whenever it may be, to prepare and present for approval a brief of evidence in said case, and the presiding Judge may enter his approval thereon at any time, either in term or vacation, and if the hearing of the motion shall be in vacation, and the brief of evidence has not been filed in the Clerk's office before the date of the hearing said brief of evidence may be filed in the Clerk's office at any time within ten days after the motion is heard and determined.

This 26 day of July, 1921.

W. L. Hodges, Judge of Northern Circuit.

Due and legal service of the within motion and order acknowledged, time, copy and all other and further service waived.

This 26 day of July, 1921.

Berry T. Moseley, Attorney for Plaintiff.

[File endorsement omitted.]

[fol. 34]

MADISON SUPERIOR COURT

[Title omitted]

AMENDED MOTION FOR NEW TRIAL—Filed March 9, 1922

And now comes the American Railway Express Company, the movant in the original motion for new trial heretofore filed, and on this, the 9th day of March, 1921, at the time and place set for the hearing thereof, and by leave of the Court first had and obtained, amends its said original motion by adding thereto the following grounds.

1

That the Court erred, as movant contends in charging the jury as follows:

The defendant comes into court and denies it is liable as to the amount of \$152.50. They admit receiving the goods, and they admit they were lost or destroyed, and that they are liable under a receipt issued by the company tendered to the plaintiff. Because the undisputed evidence in this case is that there was not only a tender of the receipt to the plaintiff, but that the receipt in question which, under the law, became a binding contract between the plaintiff and the defendant was actually given to the plaintiff and accepted. The use of the word tendered in this connection was inaccurate and misleading, so movant contends, in that it in effect charged the jury that a tender, and not a delivery, had been made.

2

That the Court erred in charging the jury as follows:

Private instructions or limitations not known to persons dealing with a general agent cannot affect them. In special agencies for a particular purpose, persons dealing with the agent should examine his authority.

Because no question of agency, either general or special, should ever have been submitted to the jury. There was no question in [fol. 35] this case and no issue involved of special agency or of general agency. The facts were undisputed. That the shipper had constituted one Fowler, her agent, to ship these goods for her, and the law will imply authority under such circumstances to make a

valid and binding contract with the carrier, involving a limitation of the carrier's liability.

3

That the Court erred in charging the jury as follows:

I charge you as a matter of law if Mrs. Daniel in making this shipment instructed the mail carrier to insure this property and put any special limitation as to the amount of insurance, or rather gave her agent special instructions in regard to the amount of insurance, that if the agent violated these instructions and the express company had no knowledge of these express limitations or instructions, then the express company should not suffer for the violation of such instructions, but the loss or injury, if any, would fall upon the principal, who was Mrs. Daniel. On the other hand, I charge you if Mrs. Daniel gave her agent the mail carrier special instructions in regard to the insurance of this property and the express company had knowledge of these limitations or restrictions, then it would be bound, provided through violations of these restrictions loss should be sustained. The express company would be liable and should suffer the loss and not the shipper on account of the violation, of the instructions. Whether or not Mrs. Daniel had an agent employed or solicited someone to represent her in the shipping of the articles is a question for you to determine, also what instructions were given him, what limitations were made and whether or not the express company had any knowledge of these special instructions or restrictions are questions of fact for you to determine from the testimony in the case.

Because there was no issue in this case which ought to have [fol. 36] been submitted to the jury, or which could legally have been submitted to the jury respecting the agency of Fowler or any limitations upon his authority, the undisputed testimony being that the shipper had constituted Fowler as her agent to make this shipment for her.

And that he had implied authority to make a valid and binding contract with the carrier, (this defendant) involving a limitation of the carriers liability, and that the instructions given Fowler by the shipper were uncontradictedly private instructions which could not bind the defendant, no matter whether the agency were general or special, and further because there are no facts in this testimony which in any way tend to show that the American Railway Express Company had any notice of any limitation on Fowler's authority, nor are any facts proven which would put this defendant upon any inquiry to learn the limitations on his authority, but, on the contrary, the uncontradicted evidence is that he had full authority from the shipper to make a contract for the shipment of these goods in her behalf.

That the Court erred in charging the jury as follows:

I charge you if you believe from the testimony in this case that the plaintiff through herself or a lawfully constituted agent entered

into an agreement with the defendant company fixing the valuation of the property shipped, and which was a basis for fixing the charges or for any other consideration fixed a valuation on the property in question then I charge you that the plaintiff in this case would be restricted or limited to the valuation fixed by such agreement.

Because there was no issue to be submitted to the jury in this connection, in that the undisputed testimony in the case was that the plaintiff had, through her lawfully constituted agent, entered [fol. 37] into an agreement with the defendant company, fixing the valuation of the property shipped, which was the basis for fixing the charges, and no issue being submitted on this point, the court should not have referred the question to a jury.

5

That the Court erred in charging the jury as follows.

"On the other hand I charge you if there was no agreement entered into between the plaintiff by herself or through her legally constituted agent and the defendant express company by which the value of the property in question was fixed, but the express company put an arbitrary limitation upon these goods by its employees, and damages arose from the loss of the goods in question, then and in that event the defendant in this case would be liable for the actual proven value of the goods in question regardless of any limitation of value that might be placed upon these goods by the defendant company along in any receipt that it might have issued. Now whether or not any such agreement was entered into by both parties, that is, the plaintiff in this case and the defendant, or whether or not there was any arbitrary value put upon this property by the defendant company and a receipt issued by it is a question of fact for you to determine from all the evidence in the case.

If under the rules of law given you in charge you believe from the testimony in this case that Mrs. Daniel through herself or agent entered into a contract, as explained to you in my charge, fixing the valuation of the property in question, then she could only recover the amount fixed by such contract. On the other hand, if you do not believe any contract was entered into by Mrs. Daniel or by herself or her agent, and an arbitrary valuation was placed upon the goods in question by the defendant company alone then the plaintiff would be entitled to recover whatever the proven value of the goods are.

[fol. 38] Because the shipment in this case is an interstate shipment, as shown by the uncontradicted evidence. That the rights and liabilities of parties to an interstate shipment are controlled by the Federal laws, the decisions of the Federal courts construing those laws and the common law, and the bill-of-lading, or in this case the express receipt and that when by the uncontradicted evidence it was shown that the defendant had delivered to the shipper's agent duly constituted, an express receipt wherein the value was stated in

writing to be Fifty (\$50) Dollars, and this express receipt had been accepted by the shipper's agent, the express receipt became a binding and valid contract between the parties in this case; and the charge of the court with reference to arbitrary fixing of value, was improper and erroneous, because the question of whether the value was fixed arbitrary or not was not involved in this case, under the uncontradicted testimony.

6

The court erred in charging the jury as follows:

"I also charge you if there was no contract fixing the valuation or no receipt fixing the valuation, or no agreement of any kind or memorandum of any kind fixing the valuation, the plaintiff would be entitled to recover the proven value of the property.

Because the uncontradicted evidence in this case is that there was a contract in which the plaintiff, through her lawfully constituted representative and agent, fixed the valuation of the property and obtained the lower of two rates.

7

That the Court erred, so movant contends in permitting the witness, Mrs. J. S. Daniel, over objection, to testify as to what authority she gave her agent, Fowler, as to placing a valuation upon the package to be transported, for that no testimony was introduced [fol. 39] showing any notice to the defendant express company of any limitations privately given Fowler on his authority to act.

8

That the Court erred in refusing to admit in evidence properly certified copies of the tariffs and classifications of file with the Interstate Commerce Commission, because this shipment was an interstate shipment, and the filed tariffs and classifications, by which the defendant proposed to show that the shipment in question was one as to which the Interstate Commerce Commission had authorized the defendant as a carrier of express, to maintain alternate rates dependent upon the value expressed in writing, so as to bring itself within the Federal Statute known as the Second Cummins Amendment, which was the controlling law governing the rights and liabilities of the parties to this shipment, should have been admitted in evidence, and because said tariffs and classifications, when properly certified as they were in this case, would show that the shipper had in fact the choice of alternate rates, dependent upon the value of the shipment, as declared in writing by the shipper, and that this evidence was material and relevant, and that it was highly prejudicial to the rights of this defendant to exclude such evidence.

Wherefore, movant prays that these, its grounds of motion for a new trial, be considered by the Court, and that a new trial be granted upon each and all of the grounds.

Robert C. Alston, Clarence E. Adams, Attorneys for Movant.

IN MADISON SUPERIOR COURT

ORDER ALLOWING FILING—Filed March 9, 1922

At Danielsville, Ga., the 9th day of March, 1922, the above and foregoing amended motion allowed and the grounds thereof are approved, and it is ordered that the same be filed.

W. L. Hodges, Judge Superior Court.

[File endorsement omitted.]

[fol. 40]

IN MADISON SUPERIOR COURT

ORDER OVERRULING MOTION FOR NEW TRIAL—April 4, 1922

The within and foregoing motion for new trial came on to be heard at the regular March Term, 1922, of Madison Superior Court in pursuance of proper orders heretofore granted.

After giving said motion mature consideration, it is ordered that the same be and is hereby overruled and a new trial refused.

The decision of the court was reserved in this case until this date by agreement of counsel for parties.

W. L. Hodges, Judge Superior Court, Northern Circuit.

SUPERIOR COURT OF MADISON COUNTY

CLERK'S CERTIFICATE—May 5th, 1922

I hereby certify that the foregoing pages, hereto attached, contain a true transcript of such parts of the record as are specified in the bill of exceptions and required by the order of the Presiding Judge, to be sent to the Court of Appeals in the case of American Ry. Exp. Company, Plaintiff in error, vs. Geo. C. Daniel, Defendant in error. I further certify that the July 1921 Term of said Court at which said case was tried, adjourned July 28th, 1921, All of which appears from the Records and Minutes of said Court.

Witness my signature and the seal of said Court, affixed the day and year first above written.

Wm. D. Meadow, Clerk Superior Court, Madison Co., Ga.

[fol. 41] [File endorsement omitted.]

[Title omitted]

OPINION

By the COURT:

1. Where a carrier seeks to limit its liability to the declared or agreed value contained in the contract of shipment, as provided in the second Cummins amendment, of August 9, 1916, such declared or agreed value must be declared or agreed upon knowingly and understandingly by the shipper and the carrier and for the purpose of securing the reduced rate authorized by the amendment. While a receipt given to the shipper by the carrier for goods received for transportation will, when accepted by the shipper, operate as a contract between the parties a recital in the receipt of a certain valuation of the property even though the carrier exacted a lower authorized rate adjusted to such valuation, does not, without more, constitute an agreement knowingly and understandingly made by the shipper and the carrier for the purpose of securing a reduced rate of transportation.

2. A certain contract instruction by the court to the jury of a rule of law not applicable to the issue being tried, where harmless when the true rule applicable is elsewhere properly given in charge to the jury, is not ground for reversal.

STEPHENS, J.: 1. This is a suit by a shipper against a carrier to recover the actual value of goods lost in an interstate shipment through the alleged negligence of the carrier, where the carrier in its plea admits that the property was received for transportation and was lost through its negligence, but defends solely upon the ground that its liability was limited to a valuation of \$50, which it contends was agreed upon in the contract of shipment. A verdict for \$100 was rendered for the plaintiff, which was for an amount authorized by the evidence as representing the true value of the property lost. The carrier excepts upon the ground that, under the law and the evidence, it is not liable in an amount in excess of the alleged agreed valuation of \$50.

[fol. 43] While a carrier can not by a contract with a shipper exempt itself from liability for its own negligence or that of its servants in case of loss or damage to the article shipped, a carrier in interstate commerce may, by an agreement with the shipper, fairly and understandingly made, where the shipper is given a consideration in the choice of a lower rate based upon a declared or agreed value of the article shipped, limit its liability to the value agreed upon. Adams Express Co. v. Croninger, 226 U. S. 491; Union Pac. R. R. Co. v. Burke, 255 U. S. 317, 321; see also in this connection: American Ry. Express Co. v. Bailey, Ga. (113 S. E. 551); Pierce Co. v. Wells Fargo & Co., 230 U. S. 278; Mo. Kan. & Tex. R. Co. v. Harriman, 227 U. S. 657; Wells Fargo & Co. v. Neinan-Marcus Co., 227 U. S. 469. This is the settled Federal law as laid down in Adams Express Co. v. Croninger,

supra, and cases following it. This rule is in no wise changed by the provisions of the second Cummins amendment, of August 9, 1916. This amendment provides that the carrier shall not be relieved of liability for the full amount of the actual loss or damage sustained, notwithstanding any agreement made limiting its liability to a declared or agreed value placed upon the article shipped, unless the carrier is authorized by the interstate-commerce commission to establish and maintain rates "dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property." According to this provision this declared or agreed value, before it can operate to limit the amount of the carrier's liability, must be in writing, and it must also be declared and agreed [fol. 44] upon as the released value of the property, knowingly and understandingly and for the purpose of securing the lower rate. A value arbitrarily placed by the carrier upon the property presented for transportation, even though the reduced rate determinable by such valuation is charged the shipper, which is not the result of a choice freely and understandingly made by the shipper for the purpose of securing the reduced rate, will not amount to such a declared or agreed valuation, based upon a reduced rate charged, as will operate to relieve the carrier from liability for the full actual loss or damage.

In the case before us it does not appear that the shipper made any declaration as to the value of the article shipped. Nor does it appear that the \$50 valuation placed upon the shipment by the agent of the defendant carrier, which was less than the true value, even though acquiesced in by the agent of the shipper, was, if agreed upon, agreed upon as a reduced value knowingly and understandingly and for the purpose of securing the benefit of the reduced rate. In fact it does not appear that the shipper's agent who delivered the package to the carrier had any information whatsoever that the carrier was authorized to charge a reduced rate based upon a reduced valuation. It furthermore appears that the agent of the shipper was ignorant of the value of the contents of the package presented for transportation, and the agent of the carrier receiving the package was aware of this ignorance, and upon the professed inability of the agent for the shipper declare the value of the articles presented for transportation, the carrier's agent suggested the value of \$50, which was placed upon the property shipped and a rate made accordingly.

The contention of counsel for the plaintiff in error, that under the authority of American Ry. Ex. Co. v. Lindenburg, decided Jan. 8, [fol. 45] 1923, — U. S., —, the acceptance of a receipt for the property presented for transportation given by the carrier to the shipper in this case established a contract limiting the carrier's liability to \$50, the valuation actually placed upon the property, is unavailable to the plaintiff in error, since the receipt is not in evidence, and the parol evidence as to its contents does not show that the receipt contained any agreement between the carrier and the shipper whereby the shipper agreed to a reduced value for the purpose of securing a reduced rate. Evidence to the effect that the \$50 valuation placed upon the contents of the shipment was recited in the receipt does not,

without more, establish that the receipt contained an agreement whereby the shipper consented to the \$50 valuation for the purpose of securing the reduced rate charged.

2. Where the court instructed the jury favorably to the defendant carrier, that one who is entrusted with property by the owner for the purpose of delivering it to a carrier for transportation presumably has authority to agree with the carrier upon the terms of shipment, and that, in the absence of any knowledge by the carrier that such agent is exceeding his authority and is violating his instructions from his principal when entering into an agreement with the carrier as to the value of the property, the owner of the property is bound by such agreement, an instruction to the jury to the effect that persons dealing with a special agent for a particular purpose should examine such special agent's authority was, if error, harmless.

3. Under the above rulings, no reversible error appears.

Judgment affirmed. Jenkins, P. J., and Bell, J., concur.

[fol. 46]

COURT OF APPEALS OF GEORGIA

JUDGMENT—February 27, 1923

The Honorable Court of Appeals met pursuant to adjournment. The following judgment was rendered:

AMERICAN RY. EXPRESS CO.

v.

G. C. DANIEL

This case came before this court upon a writ of error from the superior court of Madison county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed.

Jenkins, Stephens and Bell, JJ., concur.

[fol. 47]

COURT OF APPEALS OF GEORGIA

[Title omitted]

MOTION FOR REHEARING—Filed February 28, 1923

Comes now the American Railway Express Company, Plaintiff in Error, and before the remittitur in this case has been transmitted to the Clerk of the trial court, and during the term at which the judgment sought to be reviewed was rendered, makes and files this,

its motion for a rehearing and shows to the Court the following facts as constituting its grounds therefor:

1

The shipment in this case is an interstate shipment and as such is governed exclusively by the Federal law. This fact was pointed out to the Court in the brief of the plaintiff in error and somewhat emphasized. It may not be harmful to repeat it now and to call the Court's attention not only to the cases cited on the original brief, but to the cases of American Railway Express Company vs. Roberts, 28 Ga. App., 510; Central of Georgia vs. Yesbik, 146 Ga., 769; Southern Railway vs. Morris, 147 Ga., 729. This doctrine is well settled and is probably recognized by this Court in the decision in the instant case. What was apparently not considered and given weight by the Court, was that the State rule as to limitation of liability by the carrier in its shipping receipt is a different rule and based upon different principles than is the Federal rule.

2

The decision in the case at bar is rested upon the case of American Railway Express Company vs. Bailey, 113 S. E. 551. We desire to point out to the Court here that that shipment was an intrastate shipment in Georgia and for that reason the measure of liability and the rights of the parties were governed by the Georgia law and not by the Federal law. As we endeavored to point out in the original brief, the United States Supreme Court, as early as the Croninger case, 226 U. S., 491, has adhered in an unbroken line of authorities to what may be termed the *Estoppel* Doctrine. Briefly stated this doctrine is:

"Where at the time of shipment a statement or declaration in writing by the shipper is made of the value of the shipment upon which the carrier fixes a rate, where the carrier maintains alternate rates dependent upon the values declared, the shipper is estopped, in case of loss, to recover more than the value stated to which the lower alternate rate was applied."

The above is quoted from our original brief and referred to therein as "proposition B." As authorities for this proposition we cited the Second Cummins Amendment and a long list of cases. We do not now repeat those citations, but respectfully refer the Court to our original brief. We do, however, pick out from that list, the case of George N. Pierce, vs. Wells-Fargo Company, 236 U. S., 278, and Wells-Fargo Company vs. Neiman-Marcus, 227 U. S. 469, as illustrating the Federal rule that recovery is limited to an amount to which the lower alternate rate was applied and that the prohibition against the shipper's recovery of the full value rests upon the Doctrine of *Estoppel*.

We now draw the Court's attention to a decision handed down at the October term, 1922, of the United States Supreme Court.

The case referred to is that of American Railway Express Co. vs. Lindenburg, 43 Supreme Court Reporter, page 206.

[fol. 49] In that case the United States Supreme Court reiterated what it had previously said in all the cases that have ever preceded it in which was drawn in question the right of the carrier to limit its liability to an amount referable to the rate applied. In the Lindenburg case a shipment of two trunks weighing 100 pounds respectively, and a package weighing 10 pounds were shipped from Charleston, West Virginia to Indianapolis, Indiana. This was in July, 1918. A receipt was given by the American Railway Express Company, which provided:

“— shall this company be held liable or responsible, nor shall any demand be made upon it beyond the sum of fifty dollars upon any shipment of 100 pounds or less, and for not exceeding 50 cents per pound upon any shipment weighing more than 100 pounds, and the liability of the express company is limited to the value above stated unless the just and true value is declared at time of shipment, and the declared value in excess of the value above specified is paid for, or agreed to be paid for, under this company's schedule of charges for excess value.”

At the time of the shipment, the value of the property was neither stated by the respondent nor demanded by the shipper. The charges, however, were on the basis of the limited liability set forth in the receipt. One of the trunks when delivered at destination was in bar order. Some of the goods therein were damaged and others destroyed. The plaintiff claimed that these goods were worth \$1,500.00 and sued for that sum. The American Railway Express Company, the defendant, answered and admitted a liability of \$110.00 under the terms of the receipt. The West Virginia Supreme Court gave judgment for the value of the property, irrespective of the limited liability and the case was carried to the United States Supreme Court by writ of certiorari. In the fifth head note the Court held that:

“A shipper, who takes advantage of the lower rate offered by a [fol. 50] carrier for a shipment of limited valuation, is estopped, after the loss or damage of the goods, to assert that they were of greater value.”

Elaborating on this head note, the Court holds (page 209):

“Having accepted the benefit of the lower rate dependent upon the specified valuation, the respondent is estopped from asserting a higher value. To allow him to do so would be to violate the plainest principles of fair dealing.”

The Croninger case and the Hart case (112 U. S. 331) are then cited and the court takes occasion to cite from the case of Kansas City Southern R. Co. vs. Carl, 227 U. S. 639.

The Supreme Court rested this case upon the principles just stated and reversed the West Virginia Supreme Court.

We think that this Court will find the Lindenburg case to be on all fours with the case at bar.

Before leaving this subject, however, permit us to refer again to the Pierce case (236 U. S. 278) in which the automobiles lost were of the value of thousands of dollars and recovery was limited to \$50.00. The doctrine of estoppel upon which this case and other cases cited rests, is not based upon an arbitrary valuation of a bona fide valuation. That this is true is shown conclusively in the Pierce case and in order to bring clearly to this Court the ruling made, we quote a head note of the Pierce case, where Mr. Justice Day, speaking for the court, said:

"The legality of a contract limiting the carrier's liability to a specified or agreed valuation does not depend upon that valuation having a relation to the value of the shipment, but depends upon acceptance of the parties to the contract and upon the filed tariff and the requirement of the shipper to take notice thereof and to be bound thereby."

[fol. 51]

4

That there is then a distinction between the State rule and the Federal rule is shown in the Bailey case, upon which this Court's decision is made to rest and which gives the State rule very clearly. That rule is that where the shipper and the carrier have made a bona fide contract by which the value of the property is fixed, the shipper is bound by the contract and all of the terms thereof and it is for a jury to say in each case whether there has or whether there has not been a bona fide attempt to fix the value, or whether the value inserted in the contract is merely an arbitrary valuation. The United States rule, as we have undertaken to show, differs greatly from this rule as the Pierce case, *supra*, makes exceedingly clear.

5

Plaintiff in Error points out to the Court that there has never been any conflict in the Federal decisions on this point; that the leading case of Croninger vs. the Express Company, *supra*, first announced the policy of the Federal law and that it has been adhered to without a break from that decision through the Lindenburg case, and your movant prays now a reconsideration of the decision handed down this day by this honorable Court and suggests to the Court that the Lindenburg case and the other Federal cases referred to govern the rights and the liabilities of the parties and that the Federal rule is different from the State rule and is different from the rule announced in the case at bar in the opinion handed down.

And movant alleges and points out expressly the decision of the United States Supreme Court of American Railway Express Company vs. Lindenburg, 43 Supreme Court Reporter, 206, as a case which is controlling in the instant case and which was overlooked in the decision thereof and movant expressly points out as other [fol. 52] controlling cases overlooked by the Court in the rendition of this decision the cases of:

Cleveland, C. C. & St. L. R. Co. v. Detlebach, 239 U. S. 588, 60 L. Ed. 453, 36 Sup. Ct. 177;

George N. Pierce Co. v. Wells Fargo & Co., 236 U. S. 278, 59 L. Ed. 586, 35 Sup. Ct. 351;

Atchison, T. & S. F. R. Co. v. Robinson, 233 U. S. 173, 58 L. Ed. 901, 34 Sup. Ct. 556;

Boston & M. R. Co. v. Hooker, 233 U. S. 97, 58 L. Ed. 868, 34 Sup. Ct. 526, L. R. 1915 B, 450, Ann. Cas. 1915 D 593;

Great Northern R. Co. v. O'Conner, 232 U. S. 508, 58 L. Ed. 703, 34 Sup. Ct. 380, 8 N. C. C. A. 53;

Chicago R. I. & P. R. Co. v. Cramer, 232 U. S. 490, 58 L. Ed. 697, 34 Sup. Ct. 383;

Barrett v. City of New York, 232 U. S. 14, 58 L. Ed. 483, 34 Sup. Ct. 203;

Missouri, K. & T. R. Co. v. Harriman, 227 U. S. 657, 57 L. Ed. 690, 33 Sup. Ct. 397;

Chicago, St. P. M. & O. R. Co. v. Latta, 226 U. S. 519, 57 L. Ed. 328, 33 Sup. Ct. 155;

Adams Exp. Co. v. Croninger, 226 U. S. 491, 57 L. Ed. 314, 33 Sup. Ct. 148, 44 L. R. A. (N. S.) 257;

Wells-Fargo & Co. v. Neiman-Marcus, 227 U. S. 469;

And, therefore, petitioner prays consideration of this, its motion for a rehearing and that the same be granted.

Alston, Alston, Foster & Moise, Attorneys for Movant.

[fol. 53]

COURT OF APPEALS OF GEORGIA

[Title omitted]

AFFIDAVIT OF BLAIR FOSTER—Filed February 28, 1923

I, Blair Foster, of counsel for the movant in the above and foregoing motion for a rehearing, certify that upon careful examination of the opinion of the Court, I believe that a decision, to-wit, the decision of the United States Supreme Court in the case of the American Railway Express Company vs. Lindenburg, 43 Supreme Court Reporter, 206, and the further cases of:

Cleveland, C. C. & St. L. R. Co. v. Detlebach, 239 U. S. 588, 60 L. Ed. 453, 36 Sup. Ct. 177;

George N. Pierce Co. v. Wells Fargo & Co., 236 U. S. 278, 59 L. Ed. 586, 35 Sup. Ct. 351;
 Atchison, T. & S. F. R. Co. v. Robinson, 233 U. S. 173, 58 L. Ed. 901, 34 Sup. Ct. 556;
 Boston & M. R. Co. v. Hooker, 233 U. S. 97, 58 L. Ed. 868, — Sup. Ct. 526, L. R. 1915 B 450, Ann. Cas. 1915 D 593;
 Great Northern R. Co. v. O'Conner, 232 U. S. 508, 58 L. Ed. 703, 34 Sup. Ct. 380, 8 N. C. C. A. 53;
 Chicago R. I. & P. R. Co. v. Cramer, 232 U. S. 490, 58 L. Ed. 697, 34 Sup. Ct. 383;
 Barrett v. City of New York, 232 U. S. 14, 58 L. Ed. 483, 34 Sup. Ct. 203;
 Missouri, K. & T. R. Co. v. Harriman, 227 U. S. 657, 57 L. Ed. 690, 33 Sup. Ct. 397;
 Chicago, St. P. M. & O. R. Co. v. Latta, 226 U. S. 519, 57 L. Ed. 328, 33 Sup. Ct. 155;
 Adams Express Co. v. Croninger, 226 U. S. 491, 57 L. Ed. 314, 33 Sup. Ct. 148, 44 L. R. A. (N. S.) 257;
 [fol. 54] Wells-Fargo & Co. v. Neiman-Marcus, 227 U. S. 469;

were overlooked by the Georgia Court of Appeals in the decision rendered in the case now at bar and stated above.

This 28th day of February, 1923.

Blair Foster.

[File endorsement omitted.]

[fol. 55]

COURT OF APPEALS OF GEORGIA

ORDER DENYING MOTION FOR REHEARING—March 2, 1923

The Honorable Court of Appeals met pursuant to adjournment. The following order was passed:

AMERICAN RY. EXPRESS CO.

v.

G. C. DANIEL

Upon consideration of the motion for rehearing filed in this case, it is ordered that it be hereby denied.

[fol. 56]

COURT OF APPEALS OF GEORGIA

CLERK'S CERTIFICATE—March 20, 1923

I hereby certify that the foregoing pages hereto attached contain a true and complete copy of the entire record in the case therein stated, as appears from the records and files of this office.

Witness my signature and the seal of said court hereto affixed, the day and year above written.

Logan Bleckley, Clerk. (Seal.)

[fol. 57] [File endorsement omitted.]

[fol. 58]

SUPREME COURT OF GEORGIA

3684

ORDER GRANTING WRIT OF CERTIORARI—April 4, 1923

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

AMERICAN RY. EXPRESS CO.

v.

G. C. DANIEL

Upon consideration of the application for certiorari filed to review the judgment of the Court of Appeals in this case, it is ordered that the certiorari be granted and that this order operate as the writ. The case is assigned to the trial calendar for May 21, 1923, for hearing upon the record now of file.

[fol. 59]

SUPREME COURT OF GEORGIA

3684

JUDGMENT—March 1, 1924

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

AMERICAN RY. EXPRESS CO.

v.

G. C. DANIEL

This case came before this court by writ of certiorari from the Court of Appeals of Georgia; and, after argument had, the same being for decision by a full bench of six Justices who are evenly divided in opinion, Beck, P. J., and Atkinson and Hill, JJ., being of the opinion that the judgment of the Court of Appeals should be affirmed, and Russell, C. J., Gilbert and Hines, JJ., being of the opinion that the judgment of the Court of Appeals should be reversed.

the judgment of the Court of Appeals stands affirmed by operation of law.

[fol. 60]

SUPREME COURT OF GEORGIA

[Title omitted]

PER CURIAM OPINION

By the COURT: This case coming on for decision by a full bench of six Justices, on certiorari from the Court of Appeals, and Beck, P. J., and Atkinson and Hill, JJ., being of the opinion that the judgment of the Court of Appeals should be affirmed, and Russell, C. J., and Gilbert and Hines, JJ., being of the opinion that the judgment of the Court of Appeals should be reversed, the judgment of the Court of Appeals stands affirmed by operation of law.

[fol. 61]

SUPREME COURT OF GEORGIA

CLERK'S CERTIFICATE—April 1, 1924

I hereby certify that the foregoing pages hereto attached contain true and complete copies of the entire record of file in this office in Case No. 3684, American Ry. Express Co., plaintiff in error, v. G. C. Daniel, defendant in error, as appears from the records and files of this office.

Witness my signature and the seal of said court hereto affixed the day and year above written.

Z. D. Harrison, Clerk Supreme Court of Georgia. (Seal.)

(2828)

IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1923

No. 991

AMERICAN RAILWAY EXPRESS COMPANY, Petitioner,
vs.

GEORGE C. DANIEL

On Petition for Writ of Certiorari to the Supreme Court of the State
of Georgia

ORDER ALLOWING WRIT OF CERTIORARI—Filed May 12, 1924

On consideration of the petition for a writ of certiorari herein to the Supreme Court of the State of Georgia, and of the argument of counsel thereupon had,

It is now here ordered by this Court that the said petition be, and the same is hereby, granted, the record already on file as an exhibit to the petition to stand as a return to the writ.

(4522)

No. [REDACTED] 353

FILED

APR 30 1924

WM. R. STANSBURY

CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1923, [REDACTED] 1925

AMERICAN RAILWAY EXPRESS COMPANY

a corporation, *Petitioner*

vs.

GEORGE C. DANIEL, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA, AND BRIEF IN
SUPPORT OF SAID PETITION



IN THE
Supreme Court of the United States
OCTOBER TERM, A. D. 1923
AMERICAN RAILWAY EXPRESS COMPANY, a corporation, *Petitioner*,
vs.
GEORGE C. DANIEL, Respondent.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States of America:

The petition of the American Railway Express Company respectfully shows:

NATURE OF CASE.

This is an action originally brought in the Superior Court of Madison County, Georgia, by George C. Daniel, the plaintiff therein, to recover of the American Railway Express Company, the defendant therein, the sum of one hundred fifty-two and 50/100 (\$152.50) dollars, as the value of certain articles contained in an express shipment made on August 25, 1920, by Mrs. J. S. Daniel, the mother of the plaintiff, from Comer, Georgia, consigned to her son, George C. Daniel, the plaintiff, at Baltimore, Maryland; the shipment was never delivered to the consignee. The defendant, admitting the loss of the package and its contents, set up and relied upon a limited liability defense, claiming that its maximum liability was fifty (\$50.00) dollars under the terms of the written express receipt which it had issued and which had been accepted by the shipper, and in which receipt the value of the

shipment was stated to be fifty (\$50.00) dollars and upon which value the defendant had charged the lower alternate rate, dependent upon the value so declared or agreed upon. Defendant admitted liability to the extent of fifty (\$50.00) dollars.

The jury rendered a verdict in favor of the plaintiff in the sum of one hundred (\$100.00) dollars, and its motion for a new trial having been overruled by the trial court defendant appealed to the Court of Appeals of Georgia. That court sustained the lower court and allowed the verdict and judgment to stand. Defendant filed its petition for a writ of certiorari in the Supreme Court of Georgia to review the judgment of the said Court of Appeals, and this petition having been sanctioned, the writ of certiorari was issued and the case brought into the Supreme Court of Georgia for final determination. On March 1, 1924, the Supreme Court handed down its decision, which was an affirmance of the judgment of the Court of Appeals, for that three (3) Justices of the full bench of six (6) Justices stood in favor of affirming the Court of Appeals and three (3) Justices in favor of reversing the said Court and thereupon, under the rule, the judgment of the Court of Appeals stood affirmed by operation of law.

BRIEF ANALYSIS OF THE EVIDENCE.

It appeared in the case that the shipper did not herself deliver the shipment to the Express Company for transportation but that this was done for her by a representative, one Fowler, who, while knowing in a general way the nature of the contents of the express package did not know its value. This fact Fowler stated to the express agent upon delivery to the latter of the shipment and in response to the agent's inquiry as to

its value for rate fixing purposes. The express agent thereupon asked if a valuation of fifty (\$50.00) dollars would be satisfactory and this was agreed to by Fowler. The express agent then wrote that sum into the express receipt as expressing the value of the package and gave the receipt to Fowler, who accepted it.

In order to bring itself within the protection of the contract the defendant Express Company upon the trial proved by the oral testimony of the express agent that the rate charged was dependent upon the value declared. His testimony on that point was that above a fifty (\$50.00) dollar valuation a higher rate would have been charged. The defendant also offered in evidence a duly certified copy of its schedule of rates of file with the Interstate Commerce Commission for the purpose of showing its tariffs, but, of his own motion, the trial judge ruled this evidence inadmissible as being irrelevant and immaterial. This was one of the rulings from which appeal was taken to the Court of Appeals.

The original express receipt having been lost, the trial court refused permission to the defendant to introduce in evidence a copy thereof containing the various terms and conditions usually found in such documents, but did accord the right to prove its contents by parole. This proof showed that the receipt accepted by Fowler read: "Comer, Ga., August 25th. One Package. Value \$50.00."

OPINION OF COURT BELOW

The final judgment was that of the Supreme Court of Georgia affirming the judgment of the Georgia Court of Appeals. The Supreme Court is the highest court of Georgia in which a decision could be had. No opinion accompanied

the Supreme Court decision. The practice has been not to write opinions when the decision of the lower court is affirmed by operation of law because of an equally divided court. The decision of the Court of Appeals which thus stands affirmed contains the only reasons assigned in support of the judgment. The crux of that opinion is found in the headnote of the case as written by Judge Stephens of the Court of Appeals and in the excerpts quoted below from the body of the opinion.

Thus the headnote reads:

1. "Where a carrier seeks to limit its liability to the declared or agreed value contained in the contract of shipment, as provided in the contract of shipment, as provided in the Second Cummins Amendment, of August 9, 1916, such declared or agreed value must be declared or agreed upon knowingly and understandingly by the shipper and the carrier and for the purpose of securing the reduced rate authorized by the amendment. While a receipt given to the shipper by the carrier for goods received for transportation will, when accepted by the shipper, operate as a contract between the parties, a recital in the receipt of a certain valuation of the property, even though the carrier exacted a lower authorized rate adjusted to such valuation, does not, without more, constitute an agreement knowingly and understandingly made by the shipper and the carrier for the purpose of securing a reduced rate of transportation.

And in the opinion it is said:

"A value arbitrarily placed by the carrier upon the property presented for transportation, even though the

reduced rate determinable by such valuation is charged the shipper, which is not the result of a choice freely and understandingly made by the shipper for the purpose of securing the reduced rate, will not amount to such a declared or agreed valuation, based upon a reduced rate charged, as will operate to relieve the carrier from liability for the full actual loss or damage.

In the case before us it does not appear that the shipper made any declaration as to the value of the article shipped. Nor does it appear that the \$50 valuation placed upon the shipment by the agent of the defendant carrier, which was less than the true value, even though acquiesced in by the agent of the shipper, was, if agreed upon, agreed upon as a reduced value knowingly and understandingly and for the purpose of securing the benefit of the reduced rate. In fact it does not appear that the shipper's agent who delivered the package to the carrier had any information whatsoever that the carrier was authorized to charge a reduced rate based upon a reduced valuation. It furthermore appears that the agent of the shipper was ignorant of the value of the contents of the package presented for transportation, and the agent of the carrier receiving the package was aware of this ignorance, and upon the professed inability of the agent for the shipper to declare the value of the articles presented for transportation, the carrier's agent suggested the value of \$50, which was placed upon the property shipped and a rate made accordingly."

And further appear these words:

"Evidence to the effect that the \$50 valuation placed upon the contents of the shipment was recited in the receipt does not, without more, establish that the receipt contained an agreement whereby the shipper consented

to the \$50 valuation for the purpose of securing the reduced rate charged."

The decision presupposes certain essential facts as having been shown and draws a legal conclusion therefrom, thus:

- (a) That the Express Company did maintain rates dependent upon the value of the shipment declared or agreed upon in writing.
- (b) That the Interstate Commerce Commission had authorized or required this under the provisions of the Second Cummins Amendment (Act Aug. 9, 1916).
- (c) That the Express Company gave the shipper a receipt in which a valuation of the particular shipment was written.
- (d) That it applied to the shipment the lower alternate rate adjusted to the value so written.

The conclusion drawn is that the proof of these facts will not serve to effectuate a limitation of liability to the sum written in the receipt because the carrier did not make it appear that the value of the shipment as stated in the receipt was made *knowingly* and *understandingly* for the purpose of securing the lower alternate rate which was in fact applied by the carrier to the value thus stated.

THE MAIN POINT INVOLVED IN THE CASE

The questions which the case presents may be stated thus:

- I. Is the liability of the carrier limited to fifty (\$50.00) dollars when as to an interstate shipment, it shows that it maintains alternate rates dependent upon the value declared

or agreed upon in writing by the shipper, and that when the shipment was tendered it for transportation it gave the shipper a written receipt therefor in which there appeared only an acknowledgment of the receipt of the package and a statement that its value was fifty (\$50.00) dollars?

(a) Or must the carrier go further and show that the valuation thus declared or agreed upon was declared or agreed upon *knowingly and understandingly for the purpose* of securing the lower rate?

II. In the absence of evidence procured by the carrier to show the *knowledge* and *understanding* with which the shipper declared or agreed upon the value, will the estoppel which otherwise would affect his right to recover full actual value be operative?

(a) Or will the court conclusively presume in the absence of fraud, the purpose for which the value was declared or agreed upon?

III. Did the trial court err in excluding the defendant Express Company's rate schedules of file with the Interstate Commerce Commission?

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT.

I. Your petitioner now avers that the Supreme Court of Georgia erred in making and entering the final judgment in this cause on the 1st day of March, 1924, in and by which final judgment the Supreme Court affirmed and sustained the judgment of the Court of Appeals of Georgia, theretofore made and entered in this case.

II. The Supreme Court of Georgia erred to the prejudice of your petitioner in holding and deciding that your petitioner was liable to the extent of the actual value of the property lost because your petitioner did not produce evidence or otherwise make it appear that the value written into the receipt, issued by it and accepted by the shipper, was placed therein *knowingly* and *understandingly* for the purpose of securing the lower rate adjusted to the value thus inserted.

III. The Supreme Court of Georgia erred to the prejudice of your petitioner in holding and deciding that under the Act of Congress passed August 9, 1916, known as the "Second Cummins Amendment" to the Interstate Commerce Act, your petitioner, in order to limit its liability to the value declared or agreed upon in writing by the shipper, must make it appear that the value so declared or agreed upon was *knowingly* and *understandingly* written for the purpose of securing the lower rate and that the legal presumption that it was so done would not avail your petitioner.

IV. The Supreme Court of Georgia erred, to the prejudice of your petitioner, in sustaining and affirming the Court of Appeals of Georgia which in turn had affirmed the trial court in excluding, *ex mero motu*, certified copies of your petitioner's rate schedules of file with the Interstate Commerce Commission.

WHEREFORE, your petitioner respectfully prays that a writ of *certiorari* may be issued out of and under the seal of this Court, directed to the Supreme Court of the State of Georgia to the end that the judgment of the Supreme Court

of Georgia may be reviewed and reversed by this Honorable Court.

AMERICAN RAILWAY EXPRESS COMPANY,

By Robert C. Alston

Its Attorneys.

Elain Foster

STATE OF GEORGIA }
COUNTY OF FULTON, S.S. }

BLAIR FOSTER, being first duly sworn deposes and says that he is attorney for the American Railway Express Company, a corporation, the above named petitioner; that he prepared the foregoing petition, and is authorized to make this affidavit; and that the facts therein alleged are true as he verily believes.

Blair Foster

Sworn to and subscribed before me the undersigned Notary Public, this 17 day of April, 1924.

My commission expires the 20th day of December,
19²⁵.

Abe S. McDonald

Notary Public,
Fulton County, Georgia.

I hereby certify that I have examined the foregoing petition, and, in my opinion, the petition is well founded and this cause is one in which the prayer of the petition should be granted by the Supreme Court of the United States.

Robert C. Weston

Of Counsel for Petitioner.

IN THE
SUPREME COURT OF THE UNITED STATES
—
OCTOBER TERM, 1923.

AMERICAN RAILWAY EXPRESS COMPANY, a corporation, *Petitioner*,
vs.
GEORGE C. DANIEL, *Respondent*.

BRIEF OF AMERICAN RAILWAY EXPRESS COMPANY
IN SUPPORT OF ITS PETITION FOR A
WRIT OF *CERTIORARI*.

The petition for the writ of certiorari seeks to review a decision of the Supreme Court of the State of Georgia, which is the highest court in which the case was actually decided. The case was appealed to the Court of Appeals of Georgia by the petitioner from an adverse judgment of the nisi pruis court. From the decision of the Court of Appeals sustaining the lower court, petitioner applied to the Supreme Court of Georgia for a writ of *certiorari* and the writ having been granted, the cause was removed to the Supreme Court for final review and determination. Although the granting of the writ is discretionary, the Georgia Supreme Court having issued it assumed jurisdiction of the cause for final determination.

Art. 6, Sec. 2, Par. 5, Constitution of Georgia.

Central of Georgia Ry. Co. vs. Yesbik, 146 Ga., 620.

The final judgment rendered by the Supreme Court was an affirmation of the Court of Appeals. This came about because the six (6) justices of the Supreme Court divided evenly on the case, and under the law of Georgia the decision under review thereupon stood affirmed by operation of law. Following the custom in divided opinion cases the Supreme Court's decision was not accompanied by an opinion.

Code of Georgia, 1910, Sec. 6208;

City of Barnesville vs. Murphey, 113 Ga. 779.

POINTS AND AUTHORITIES RELIED UPON.

1. The challenge is to the legal conclusions drawn by the Court of Appeals and sustained by the Georgia Supreme Court on *certiorari*. In reaching its conclusions the lower courts assumed that the proof which this court has held to be prerequisite was made in the trial court—that is that your petitioner did maintain rates dependent upon value declared or agreed upon in writing and that it had been expressly authorized so to do by the Interstate Commerce Commission.

American Railway Express Co. vs. Lindenburg,
260 U. S., 584;

Cincinnati, New Orleans & Texas Pacific Ry. Co. vs.
Rankin, 241 U. S., 319;

New York Central & Hudson River R. Co. vs.
Beaham, 242 U. S., 148.

2. Certified copies of the rate schedule were offered in evidence by your petitioner and excluded by the trial judge as irrelevant to any issue in the case. This was error.

Southern Express Company vs. Byers, 240 U. S., 612;
New York Central & Hudson River R. Co. vs. Beaham,
242 U. S., 148.

3. A written declaration or agreement as to value of the package made at the time of shipment and contained in a receipt given by the carrier to the shipper and accepted by him is presumed to be made for the purpose of applying the rate applicable to that value. And when alternate rates dependent upon value are maintained it is not necessary for the carrier, in order to sustain its limited liability defense, to make it appear further that the declaration or agreement was made knowingly and understandingly for the purpose of obtaining the lower rate.

This is true because the law conclusively presumes knowledge on the part of the shipper of the lawful rates as maintained by the carrier and of file with the Interstate Commerce Commission. The law presupposes the value to be stated for the purpose of fixing the rate.

Kansas City-Southern Ry. Co. vs. Carl, 227 U. S., 639;
Missouri, Kansas & Texas Ry. Co. vs. Harriman,
227 U. S., 657;
Boston & Maine Rd. vs. Hooker, 233 U. S., 97;
Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.
vs. Dettlebach, 239 U. S., 588;
Louisville & Nashville Railroad Co. vs. Maxwell,
237 U. S. 94;

That the shipment was arbitrarily valued can make no difference in the absence of rebating or false billing. The value declared determines the rate applicable. The plaintiff cannot recover more than the stated value to which the rate was applied.

Hart vs. Pennsylvania Railroad Co., 112 U. S., 331;

George N. Pierce Co. vs. Wells-Fargo Co., 236 U. S., 278;

Great Northern Ry. Co. vs. O'Connor, 232 U. S., 508;

Atchison, Topeka & Santa Fe Ry. Co. vs. Robinson, 233 U. S., 173;

4. As to Fowler's agency and authority, see:

Great Northern Ry. Co. vs. O'Conner, 232 U. S., 508, 514.

Respectfully submitted,

Robert C. Weston
Robert C. Weston

Attorneys for Petitioner.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923.

AMERICAN RAILWAY EXPRESS COMPANY, a corporation, *Petitioner*,
vs.
GEORGE C. DANIEL, *Respondent*.

Sir:

Please take notice that upon a certified copy of the transcript of the record herein and upon the annexed petition of the American Railway Express Company, a corporation, we shall move the motion hereto annexed before the Supreme Court of the United States, at the Capitol, in the City of Washington, District of Columbia, on the 5th day of May, 1924, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, and we shall then and there move for such further relief in the premises as may be just.

Dated Atlanta, Georgia, this...17.....day of April, 1924.

To

Berry T. Moseley, Esq.,
Danielsville, Ga.

Robert C. Weston

Attorneys for Petitioner.

Service of the foregoing notice of motion acknowledged;
copy of the petition for writ of certiorari and brief in support
thereof received. This 17 day of April, 1924.

Berry & Morley

Attorney for Respondent.

George C. Daniel

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1923.

AMERICAN RAILWAY EXPRESS COMPANY, a corporation, *Petitioner*,
vs.
GEORGE C. DANIEL, *Respondent*.

NOW comes the petitioner by *Robert C. Weston*
its attorney, and moves this court, upon a certified copy of
the transcript of the record herein, and upon the annexed
petition, sworn to on the 17.....day of April, 1924 for a
writ of *certiorari* directed to the Supreme Court of Georgia,
to bring before this Honorable Court, for review, the pro-
ceedings herein in said Supreme Court of Georgia, and for
such other and further relief in the premises as may be just.

Robert C. Weston

U.S. Supreme Court,
FILED
MAR 13 1925

WM. R. STANSBURY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1925

No. 53 53

AMERICAN RAILWAY EXPRESS CO., A CORPORATION

Petitioner

vs.

GEORGE C. DANIEL

Respondent.

CERTIORARI TO REVIEW A JUDGMENT OF THE SUPREME COURT
OF GEORGIA

BRIEF ON BEHALF OF AMERICAN RAILWAY
EXPRESS COMPANY, PETITIONER.



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Supreme Court of the United States

OCTOBER TERM, 1924.

No. 373

AMERICAN RAILWAY EXPRESS COMPANY, a corporation,
Petitioner,
vs.
GEORGE C. DANIEL,
Respondent.

CERTIORARI TO REVIEW A JUDGMENT OF THE SUPREME COURT
OF GEORGIA
(157 GEORGIA 731)

BRIEF ON BEHALF OF AMERICAN RAILWAY
EXPRESS COMPANY, PETITIONER.

STATEMENT OF THE CASE

This action was originally brought in the Superior Court of Madison County, Georgia, by George C. Daniel against the American Railway Express Company to recover the sum of one hundred fifty-two and 50/100 (\$152.50) dollars as the value of certain articles contained in an express ship-

ment delivered to the agent of the defendant express company on August 25th, 1920, at Comer, Georgia, to be carried by the defendant company to Baltimore, Maryland. Mrs. J. S. Daniel was the shipper of this express package and her son, George C. Daniel, the plaintiff, was named as consignee thereof. It was alleged that the shipment was never delivered.

The defendant company, in its answer, admitted the receipt of the package and its failure to deliver but pleaded that its liability was limited to fifty dollars as being the written value declared by the shipper to which the defendant had applied the lower of two alternate rates. By its plea it admitted liability to the extent of fifty (\$50.00) dollars, which amount it tendered to the plaintiff.

The evidence adduced upon the trial showed that the package was not delivered to the defendant's express agent by Mrs. Daniel in person but that this was done for her by her representative, one Fowler, who, while knowing in a general way the nature of the contents of the shipment did not know its value. This fact Fowler stated to the express agent upon delivery to the latter of the shipment and in response to the agent's inquiry as to its value for rate fixing purposes. The express agent thereupon asked if a valuation of fifty (\$50.00) dollars would be satisfactory and this was agreed to by Fowler. The express agent then wrote that sum into the express receipt as expressing the value of the package and gave the receipt to Fowler, who accepted it (Record, pp. 12-14). The representative capacity of Fowler was known to the express agent.

In order to bring itself within the protection of the receipt the defendant express company proved by the oral testimony of the express agent that the rate charged was dependent upon the value declared. His testimony on that point was that above a fifty (\$50.00) dollar valuation a higher rate would have been charged (Record, pp. 12, 13). The defendant also offered in evidence a duly certified

copy of its schedules of rates of file with the Interstate Commerce Commission for the purpose of showing that its tariffs varied with declared valuation, but the trial judge, of his own motion, ruled this evidence inadmissible as being irrelevant and immaterial. (Record, p. 15.)

As the original express receipt was lost, the trial court refused permission to the defendant to introduce in evidence a copy thereof containing the various terms and conditions usually found in such documents, but did accord the right to prove the contents of the receipt by parole. The proof of the defendant in this respect showed that the receipt accepted by Fowler for delivery to his principal contained a written statement that the value of the package to be transported was fifty (\$50.00) dollars.

The jury returned a verdict for the plaintiff, of one hundred (\$100.00) dollars, and judgment against the defendant for that sum was thereupon taken. When its motion for a new trial was overruled by the trial court, the defendant prosecuted its appeal to the Court of Appeals of Georgia. That court sustained the lower court and allowed the verdict and judgment to stand. (29 Ga. App. 780). Petitioner then filed its petition for a writ of certiorari in the Supreme Court of Georgia, seeking to review the judgment and decision of the said Court of Appeals. The petition for the writ was sanctioned, the writ of certiorari issued and the cause brought into the Supreme Court of Georgia for final determination. On March 1, 1924, the Supreme Court handed down its decision and judgment, which was an affirmance of the Court of Appeals, for that three justices of the full bench of six justices stood in favor of affirming the Court of Appeals and three justices in favor of reversing the said Court and thereupon, under the rule, the judgment of the Court of Appeals stood affirmed by operation of law.

The petitioner then filed in this Court its petition for a writ of certiorari to the final judgment of said Supreme

Court of Georgia, which was duly allowed and granted on the 12th day of May, 1924.

SPECIFICATION OF ERRORS

It is submitted that the Supreme Court of Georgia erred in making and entering the final judgment in this case on the first day of March, 1924, by which final judgment the Supreme Court affirmed and sustained the judgment of the Court of Appeals of Georgia, theretofore made and entered in this cause, in the following particulars, to-wit:

"1. The Supreme Court of Georgia erred to the prejudice of this petitioner in holding and deciding that petitioner, under the facts in this case could lawfully be held liable in any greater sum than fifty (\$50.00) dollars which was the amount declared or agreed upon in writing by the shipper as the value of the property shipped and as to which petitioner had applied a rate dependent upon the value so declared.

"2. The Supreme Court of Georgia erred to the prejudice of your petitioner in holding and deciding that your petitioner was liable to the extent of the actual value of the property lost because your petitioner did not produce evidence or otherwise make it appear that the value written into the receipt, issued by it and accepted by the shipper, was placed therein *knowingly* and *understandingly* and for the *purpose of securing the lower rate* adjusted to the value thus inserted.

"3. The Supreme Court of Georgia erred to the prejudice of your petitioner in holding and deciding that under the Act of Congress passed August 9, 1916, known as the "Second Cummins Amendment" to the Interstate Commerce Act, your petitioner, in order to limit its liability to the value declared or agreed upon in writing by the shipper, must make it appear that the value so declared or agreed upon was *knowingly* and *understandingly written for the purpose of securing the lower rate* and that the legal presumption that it was so done would not avail your petitioner.

"4. The Supreme Court of Georgia erred to the prejudice of your petitioner, in sustaining and affirming the Court of Appeals of Georgia which in turn had affirmed the trial court in excluding, *ex mero motu*, certified copies of your petitioner's rate schedules of file with the Interstate Commerce Commission."

BRIEF OF THE ARGUMENT

The Code of Georgia, 1910, paragraph 6202, provides that no decision of the Supreme Court of Georgia shall be delivered *ore tenus*, but that

"the same shall be announced by a written synopsis of the points decided."

This section was made applicable to the Court of Appeals of Georgia by the Constitution of the State. Thus Section 2, of Article 6, paragraph 9, of the Georgia Constitution as amended in 1916, provides:

"* * * The laws relating to the Supreme Court as to the * * * powers, practice procedure (therein) * * * shall apply to the Court of Appeals."

But paragraph 6208 of the Georgia Code of 1910, is that

"If the Court (the Supreme Court) is not unanimous in its decisions, the judges shall deliver the opinions *seriatim*, but they shall not be required to write them out."

In cases wherein the Supreme Court stand equally divided, thus affirming the decision under review by operation of law, the practice has been to omit any written opinion.

It thus appears that while the judgment under review in this Court is that of the Supreme Court of Georgia, we must look to the written opinion and decision of the Court of Appeals to determine the reasons assigned for the judgment. The Supreme Court by its affirmation has placed its stamp of approval upon the conclusions reached by the Court of Appeals, and as those conclusions were predicated

upon rules of law announced to be controlling it would seem that the court of last resort in Georgia has also sanctioned the reasoning of the intermediate court. Of course this is not necessarily true, for the Supreme Court may have approved the result but repudiated the reasoning which led to the result. But as the result itself is, upon the record, erroneous, no matter upon what theory it was reached, and as the explanation afforded by the opinion of the Court of Appeals supplies the only expression of either court of the reasons upon which the judgment is made to rest, this brief will concern itself largely with the doctrines announced by the Court of Appeals. It is believed, however, that the brief will demonstrate that irrespective of the reasons ascribed, the conclusion reached is erroneous, and that the application of the law as announced in repeated decisions of this Court, and embodied in the Acts of Congress, must compel a reversal of the state court's judgment.

The petitioner seeks by this writ to challenge the construction placed by the State Court upon the Act of Congress passed August 9, 1916, ch. 301, 39 Stat. 441, known as the "Second Cummins Amendment" to the Interstate Commerce Act, by which construction it was held that liability for full, actual loss, damage or injury accrued against the carrier unless the carrier should make it appear that the value written into the receipt and which value formed the rate basis, was placed therein with the *knowledge and understanding* of the shipper that it was to form the basis of the rate and was placed there *for that purpose*; and that there was no presumption of law, in aid of the carrier, that the value written into the receipt accepted by the shipper was conclusively presumed to be therein for the purpose of applying the alternate rate adjusted to the value.

There is a further challenge to the error in failing to allow the petitioner to put in evidence its rate schedules of file with the Interstate Commerce Commission.

The syllabus of the points adjudicated by the Court of Appeals and the opinion of Judge Stephens who spoke for the Court appear in the Record, pages 27 to 29.

The specifications of error, numbers 1, 2 and 3, call into question the construction of the "Second Cummins Amendment" and are argued together herein. The fourth specification of error is treated separately.

A BRIEF ANALYSIS OF THE OPINION OF THE STATE COURT

The "Second Cummins Amendment" to the Interstate Commerce Act (Act of Congress, August 9, 1916, ch. 301, 39 Stat. 441), provides that

"the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary live stock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section ten of this Act to regulate commerce, as amended; and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared or agreed upon; and the commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in

its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term 'ordinary live stock' shall include all cattle, swine, sheep, goats, horses and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses."

The decision of the lower court is made to turn upon the *knowledge* and *understanding* with which the shipper declared the value of the package tendered for transportation. It is said that the *arbitrary* declaration of value made by the shipper when offering the goods to the carrier does not show that the shipper *knew* and *understood* that such a declaration was to control the rate to be paid, and that even though all other prerequisites of the Cummins Amendment had been met by the carrier, the failure to show that the purpose of the written declaration was to procure the lower rate would authorize recovery to the extent of full, actual loss.

The Court goes on to point out that in the instant case the shipper's agent was, to the knowledge of the express company's agent, ignorant of the real value of the package, and that the value written into the receipt was, therefore, an admittedly *arbitrary* one. Furthermore, it was said, the shipper's agent did not know that the express company maintained rates dependent upon value and consequently could not have declared the value with the knowledge and understanding that it was to be used to determine the rate.

It will be noticed that the lower court has presupposed that the petitioner (a) had been, as to this shipment, expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property; and (b) that there had been a written declaration of value or written agreement as the released value of the property made by the shipper through her agent.

Yet, the court held that proof of these two essentials was not enough to limit liability to the value declared, but that the petitioner should have gone further and shown that the shipper

"consented to the \$50.00 valuation for the purpose of securing the reduced rate charged" (Record, p. 29, concluding words of Judge Stephens' opinion elaborating the first headnote).

THE ACTS OF FOWLER, THE SHIPPER'S AGENT, WERE THE ACTS OF THE SHIPPER

It will doubtless be well at this juncture to point out that the shipper, acting through her agent, Fowler, was bound by his acts in agreeing to the valuation placed in the receipt as fully as though she herself had made the agreement.

In *Great Northern Ry. Co. vs. O'Connor*, 232 U. S. 508, it was said:

"A shipper, whose forwarder has violated instructions as to valuation or classification to his damage, has his remedy against the forwarder but not against the carrier. He is bound by the acts of his agent!"

PETITIONER MAINTAINED ALTERNATE RATES DEPENDENT UPON VALUE DECLARED OR AGREED UPON IN WRITING AND IS ENTITLED TO THE PRESUMPTION THAT IT HAD BEEN EXPRESSLY AUTHORIZED OR REQUIRED SO TO DO BY ORDER OF THE INTERSTATE COMMERCE COMMISSION

The agent of the Express Company testified that the rates to be charged the shipper would depend upon the value declared by him (Record, pp. 12, 13). This testimony was uncontested and the Georgia Court of Appeals assumed without question that the petitioner's rates varied with the value declared or agreed upon.

To sustain its contention that it had been expressly authorized or directed by the Interstate Commerce Commission to maintain rates based upon value the petitioner relies upon the presumption to be indulged in its behalf that it was carrying on its business lawfully, and that having shown the maintenance of rates based upon value due authority of the Interstate Commerce Commission so to do is to be implied in the absence of proof to the contrary.

Cincinnati, New Orleans & Texas Pacific Ry. Co. vs. Rankin, 241 U. S. 319, 327;

American Ry. Expr. Co. vs. Lindenburg, 260 U. S. 584.

In the *Lindenburg* case it was said:

"It is a rule of general application that where an act is done which can be done legally only after the performance of some prior act, proof of the later carries with it a presumption of the due performance of the prior act."

and after citation of authorities the Court continues:

"In the absence of proof to the contrary, we, therefore, indulge the presumption that in basing its transportation charges upon the values recited in the receipt, the petitioner had due authority."

It would seem, then, that petitioner had brought itself within the protection of the Cummins Amendment and the receipt. The state appellate court could not justify an affirmance of the judgment of the nisi prius court on the ground that the petitioner had not shown compliance with the provisions of the Cummins Amendment in regard to the written declaration of value or the express authority of the Commission to maintain rates based upon value. It does not attempt to do so. It assumes that all that was necessary to be shown by the petitioner in this respect was shown, and its judgment is grounded altogether upon different considerations. We come now to discuss those considerations.

THE SHIPPER AND CARRIER ALIKE ARE CHARGED WITH KNOWLEDGE OF THE ONLY LAWFUL RATE WHICH THE CARRIER MAY EXACT AND THE SHIPPER MUST PAY; IF THE RATE IS BASED UPON VALUE THE STATEMENT OF THE VALUE WRITTEN INTO THE RECEIPT BY THE SHIPPER, AND ACCEPTED BY HIM, IS PRESUMED TO HAVE BEEN INSERTED FOR THE PURPOSE OF APPLYING THE GRADUATED RATE APPLICABLE THERETO

(a) *The Shipper's Knowledge of the Carrier's Published Rates is Presumed.*

Section 6 of the Interstate Commerce Act (as amended by Section 2 of the Hepburn Act, June 29, 1906, ch. 3591, 34 Stat. 584, 586), provides:

"That every common carrier subject to the provisions of this Act shall file with the Commission created by this Act and print and keep open to public inspection schedules showing all the rates, fares and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print, and keep open to public inspection as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares and charges, or the value of the service rendered

to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this Act.

* * * * *

"No carrier, unless otherwise provided by this Act, shall engage or participate in the transportation of passengers or property, as defined in this Act, unless the rates, fares and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this Act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs"

Petitioner, being engaged in the interstate transportation of express is subject to the requirements of this Act. It may not lawfully transact that business until it has complied with the provisions thereof. Being actually engaged in that business the presumption is that it was lawfully carrying it on,—that is, that it had filed and published its rates as it was commanded to do by the statute.

*Cincinnati, New Orleans & Texas Pac. Ry. Co. vs.
Rankin, 241 U. S. 319, 327;*

New York Central & Hudson River R. R. Co. vs. Bea-ham, 242 U. S. 148;

American Railway Express Company vs. Linden-burg, 260 U. S. 584.

The rates when filed and published are equally binding upon the shipper and carrier, and both are charged with knowledge of them.

Thus in

Kansas City Southern Ry. Co. vs. Carl, 227 U. S. 639, 652, it was said:

"The rate, when made out and filed, is notice, and its effect is not lost, although it was not actually posted in the station. * * * The shipper's knowledge of the lawful rate is conclusively presumed."

Missouri, Kansas & Texas Ry. Co. vs. Harriman, 227 U. S. 657;

Boston & Maine Rd. vs. Hooker, 233 U. S. 97;

Atchison, Topeka & Santa Fe Ry. Co. vs. Robinson, 233 U. S. 173;

Chicago & Alton R. R. Co. vs. Kirby, 225 U. S. 155, 166;

Louisville & Nashville R. R. vs. Maxwell, 237 U. S. 99.

(b) *The Purpose for Which the Value is Declared by the Shipper Will be Presumed.*

The shipper being bound to a knowledge of the rates, and that they were dependent upon the value declared at the time of shipment, is also conclusively bound by the presumption that in declaring the value he did so for the purpose of securing that rate which was related to that value.

In the *Harriman* case, *supra*, this Court, speaking through Mr. Justice Lurton, said:

"The ground upon which the shipper is limited to the valuation declared is that of estoppel, and pre-

supposes the valuation to be one made for the purpose of applying the lower of two rates based upon the value!" (P. 668.)

And in the *Carl* case it was said:

"The valuation declared or agreed upon as evidenced by the contract of shipment upon which the published tariff rate is applied, must be conclusive in an action to recover for loss or damage a greater sum."

(c) *The Inherent Error in the State Court's Opinion.*

The first syllabus of the opinion rendered by the Georgia Court of Appeals epitomizes the decision. It reads:

"Where a carrier seeks to limit its liability to the declared or agreed value contained in the contract of shipment, as provided in the Second Cummins Amendment, of August 9, 1916, such declared or agreed value must be declared or agreed upon knowingly and understandingly by the shipper and the carrier and for the purpose of securing the reduced rate authorized by the amendment. While a receipt given to the shipper by the carrier for goods received for transportation will, when accepted by the shipper, operate as a contract between the parties, a recital in the receipt of a certain valuation of the property, even though the carrier exacted a lower authorized rate adjusted to such valuation, does not, without more, constitute an agreement knowingly and understandingly made by the shipper and the carrier for the purpose of securing a reduced rate of transportation."

In the light of the authorities just cited and quoted from it must be apparent that the rule announced in this head-note and in the body of the opinion finds no sanction in the federal law. On the contrary this Court has expressly denied it.

The Georgia Court manifestly misapplied the words "knowingly and understandingly made". This court has used the words "understandingly and freely" in connection with these contracts. Without undertaking to draw distinction between the expressions "understandingly and freely" and "knowingly and understandingly," let us examine the

circumstances in which this Court has used the expression "understandingly and freely" in this connection.

In *Union Pacific Railroad vs. Burke*, 255 U. S. 317, 321, this court said:

"In many cases from the decision in *Hart vs. Penn Railroad Co.*, 112 U. S. 331, decided in 1884, to *Boston & Maine R. R. vs. Piper*, 246 U. S. 439, decided in 1918, it has been declared to be the settled federal law that if a common carrier gives to a shipper the choice of two rates, the lower of them conditioned upon his agreeing to a stipulated valuation of his property in case of loss, even by the carrier's negligence, if the shipper makes such a choice, understandingly and freely, and names his valuation, he cannot thereafter recover more than the value which he thus places upon his property."

In *Adams Express Co. vs. Croninger*, 226 U. S. 491, 508-9, this Court said:

"That no inquiry was made as to the actual value is not vital to the fairness of the agreement in this case. The receipt which was accepted showed that the charge made was based upon a valuation of fifty dollars, unless a greater value should be stated therein. The knowledge of the shipper that the rate was based upon the value is to be presumed from the terms of the bill of lading and of the public schedules filed with the Commission."

See: *Hart vs. Pennsylvania Rd.*, 112 U. S. 331, 340;

Atchison, Topeka & Santa Fe R. R. Co. vs. Robinson, 233 U. S. 173;

George N. Pierce Co. vs. Wells, Fargo & Co., 236 U. S. 278.

In the case at bar, the shipper's agent brought the shipment to the carrier; a valuation was declared; the valuation was put into the receipt and the agent of the shipper accepted the receipt. The record shows no fraud, no duress, no imposition upon the shipper or the shipper's agent by the carrier. The shipper is of course bound by the act of

his agent. The shipper made no effort to correct the valuation, nor did she make complaint thereof, so far as the record shows, until after the loss.

There is certainly no evidence in the case to suggest that the transaction was not knowingly entered into, because, if for no other reason, the law required the shipper to know all that appertained to what was actually done. There is no evidence to suggest that the shipper did not understandingly do what was done, nor could there be any such suggestion, because the law required her to understand that there were different rates based upon valuation. There is nothing to suggest that what was done was not freely done, nor could such a suggestion be made. The shipper had the right under the filed tariffs to name whatever value she desired to name on the shipment, and to pay the rate lawfully affixing thereto. There is no suggestion that the shipper was denied this right.

The only basis for the contention that there was a failure to understand or a failure of knowledge, must be based upon the theory that the agent of the shipper who delivered the package to the carrier did not know the contents or value thereof. It is perfectly clear under the decisions that this cannot constitute a lack of knowledge of the law or the rates, or the rules and regulations. *Great Northern Ry. Co. vs. O'Connor*, cited above.

The shipper's choice of value must be left free and untrammelled, but having once stated that value fairly and freely, he is bound by it.

If the meaning attributed by the Georgia Court to the words "understandingly and freely" is to prevail, it completely destroys the whole theory upon which the Federal Transportation Law has been built.

But the Georgia Court of Appeals said that the carrier may maintain its limited liability defense only when it shows that the value declared and agreed upon was *knowingly* and

understandingly inserted and was inserted for the purpose of securing the reduced rate authorized by the Second Cummins Amendment. *Knowledge* and *understanding* of the shipper are joined to the *purpose* of the declaration by the conjunction *and*. Thus, the true interpretation of the decision is that the shipper must know and must understand that he is declaring a value for rate making purposes.

There is nothing in the record of the case at bar to show that the valuation was not understandingly made and fairly stated.

The state court assumes that if the rate is dependent upon the value declared by the shipper and if the shipper understands this fact and knows this fact when he declares the value and agrees to the value for the purpose of fixing the rate, then recovery will be limited to the amount of the value so declared or agreed upon in case of loss. The authorities cited show that the knowledge and understanding of the shipper is immaterial and that he will be conclusively presumed to have stated the value for the purpose of adjusting the rate. But the Court will notice that in the case sub judice there is no agreement on the part of the shipper or the carrier that liability will be limited to the amount of the valuation stated and upon which the rate was based and if there is to be a limitation to the stated value the authority therefor must be found in the law and not in any contract or agreement with the shipper that the carrier's liability should be limited to any stated sum or that recovery in case of loss should not exceed the stated value.

**THE SHIPPER MAY NOT RECOVER MORE THAN THE
VALUE STATED OR AGREED UPON IN WRITING
BY HIM TO WHICH THE RATE HAS BEEN AD-
JUSTED EVEN THOUGH NO EXPRESS CONTRACT
SO LIMITING RECOVERY WAS ENTERED INTO
WITH THE CARRIER**

(a) *Irrespective of the Second Cummins Amendment.*

We have now reached a point in the argument when the following question presents itself: In the absence of any agreement on the part of the shipper to be limited in his recovery to the amount stated in writing by him as the value of the shipment, to which value the carrier has applied a lower alternate rate, will the mere statement of value and application of such rate thereto serve to limit liability to the named valuation? Upon the authority of decisions of this Court that question should be answered in the affirmative. That the shipper is limited in his recovery proceeds upon the doctrine of estoppel. Broadly stated the rule is that a shipper may not declare a value and obtain the benefit of a lower rate and then after loss repudiate the declaration and recover more than the sum named by him for the purpose of securing the lower rate. Under such a rule it would not seem to be necessary that the shipper *agreed* to be estopped to recover full value or to recover more than the sum which he named. In other words, he is not estopped to repudiate his contract in which he agreed that the carrier should not be bound for more than the value declared, but he is estopped to recover more than his declared value because, having taken advantage of the rate adjusted to the lower valuation he will not be heard at a later time and after loss to say that the property had a different and a higher valuation.

In *Kansas City Southern Ry. Co. vs. Carl*, cited *supra*, this Court said:

“* * * A declared value by the shipper for the purpose of determining the applicable rate, when the rates are based upon valuation, is not an exemption from any part of its statutory or common-law liability. The right of the carrier to base rates upon value has been always regarded as just and reasonable. The principle that the compensation should bear a reasonable relation to the risk and responsibility assumed is the settled rule of the common law. Thus in *Gibbon vs.*

Paynton, 4 Burrows, 2298, it was said by Lord Mansfield (p. 2300): 'His warranty and insurance is in respect of the reward he is to receive: and the reward ought to be proportionable to the risque.' In the leading case of *Hart vs. Pennsylvania Railroad*, 112 U. S. 331, the right of the carrier to adjust the rate to the valuation which the shipper places upon the thing to be transported is the very basis upon which a limitation of liability in case of loss or damage is rested. This is an administrative principle in rate-making recognized as reasonable by the Interstate Commerce Commission, and is the basis upon which many tariffs filed with the Commission are made. *Matter of Released Rates*, 13 I. C. C. Rep. 550.

"It follows, therefore, that when the carrier has filed rate-sheets which show two rates based upon valuation upon a particular class of traffic, that it is legally bound to apply that rate which corresponds to the valuation. If the shipper desires the lower rate, he should disclose the valuation, for in the absence of knowledge the carrier has a right to assume that the higher of the rates based upon value applies. In no other way can it protect itself in its right to be compensated in proportion to its insurance risk. But when a shipper delivers a package for shipment, and declares a value, either upon request or voluntarily, and the carrier makes a rate accordingly, the shipper is estopped upon plain principles of justice from recovering, in case of loss or damage, any greater amount. The same principle applies if the value be declared in the form of a contract. If such a valuation be made in good faith for the purpose of obtaining the lower rate applicable to a shipment of the declared value there is no exemption from carrier liability due to negligence forbidden by the statute when the shipper is limited to a recovery of the value so declared. The ground upon which such a declared or agreed value is upheld is that of estoppel."

And again, in *Chicago, Rock Island and Pacific Ry. Co. vs. Cramer*, 232 U. S. 490, the Court said:

"* * * if a regularly filed tariff offers two rates, based on value, and the goods are forwarded at the

low value in order to secure the low rate, then the carrier may avail itself of that valuation when sued for loss or damage to the property."

It will be noted that in the *Cramer* case that there was no agreement on the part of the shipper that the carrier should be liable only to the extent of the value stated. That liability was so limited came about, not because of any express understanding to that effect as part of a contract, or as part of a published rate, but solely on the ground that the rate had been adjusted to value and that the doctrine of estoppel as applied by this Court would prevent recovery beyond that value.

And in the *O'Connor* case (*Great Northern R. R. Co. vs. O'Connor*, 232 U. S. 508), Mr. Justice Lamar said:

"* * * If, on the other hand, there are alternative rates based on value and the shipper names a value to secure the lower rate, the carrier, in the absence of something to show rebating or false billing, is entitled to collect the rate which applies to goods of that class, and if sued for their loss it is liable only for the loss of what the shipper had declared them to be in class and value."

As was said in the *Carl* case, *supra*, and quoted with approval in the case of *American Railway Express Company vs. Lindenburg*, 260 U. S. 584:

"To permit such a declared valuation to be overthrown by evidence aliunde the contract, for the purpose of enabling the shipper to obtain a recovery in a suit for loss or damage in excess of the maximum valuation thus fixed, would both encourage and reward undervaluations and bring about preferences and discriminations forbidden by the law. Such a result would neither be just nor conducive to sound morals or wise policies."

Wells, Fargo & Co. vs. Neiman-Marcus Co., 227 U. S. 469;

This Court has been very positive in its decisions upholding specified primary valuations of shipments when the shippers get the benefit of reduced rates dependent thereon. Two additional important cases on this are

American Railway Express Co. vs. Levee, 263 U. S. 19,

and

Galveston, Harrisburg & San Antonio Railway Co. vs. Woodbury, 254 U. S. 357.

In the *Levee* case, the record discloses that there was a receipt issued which was in the usual form, and provided "In consideration of the rate charged for carrying said property which is dependent upon the value thereof and is based on an agreed valuation of not exceeding \$50.00 for any shipment of 100 pounds or less * * * the shipper agrees that the company shall not be liable in any event for more than \$50.00 for any shipment of 100 pounds or less." No other declaration of value was made by the shipper; the agent of the Express Company did not know the amount of the rate and told the shipper that he could not apply one for that reason but that he would have to forward the goods "collect" and that the charges would have to be collected at destination on delivery of the shipment to the consignee.

In the *Woodbury* case, Mrs. Woodbury began her journey in Canada; destination was in Texas, her trunk was lost. Nevertheless, she was charged with knowledge of the rates and regulations governing interstate commerce, although "it did not appear whether the ticket purchased contained notice of any such limitation nor did it appear what was the law of Canada in this respect." She was not told when the purchase of her ticket was made or when checking her trunk that there was any limitation to the carrier's liability for the loss of baggage.

In each of these cases the limitation provided by tariffs and classifications on file with the Interstate Commerce Commission was sustained.

The case at bar is stronger for the carrier than was either of those cases.



Union Pac. R. R. Co. vs. Burke, 255 U. S. 321.

(b). *Under the second Cummins Amendment.*

When a value has been declared by the shipper and a rate dependent thereon has been exacted the very words of the Cummins Amendment show that an *agreement* that the carrier shall not be liable beyond the valuation named is not a prerequisite to the carrier's limited liability defense. The salient words of the statute are:

"in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released." (Italics ours.)

There is nothing here about the validity of any *agreement* which the carrier may make seeking to limit its liability. The maintenance of rates dependent upon value and the authority of the Commission to do so are the only prerequisites to a limited liability. And when a value is declared under these circumstances the imperative words of the statute are that recovery *must* be limited to that amount. To permit a recovery beyond the declared value where other requirements of the Amendment have been met would do violence to the words in which the act is couched. The effect of declaring a value, when the carrier, upon the authority of the Commission, maintains rates dependent upon value, is to limit recovery to the amount declared. There shall be no other effect. There shall be no greater recovery. No agreement of the shipper is necessary to produce this effect. No contract is essential. The Amendment automatically fixes the liability.

If an agreement by the shipper touching the carrier's maximum liability ever was essential, certainly none is necessary since the passage of the Second Cummins Amendment.

THE DISCRIMINATION WHICH WOULD RESULT IF A GREATER RECOVERY WERE ALLOWED

The rate and the value are indissolubly bound up together in all instances in which rates are graduated on value. *Hart vs. Penn. R. R. Co.*, 112 U. S. 331, where the court said:

"The presumption is conclusive that, if the liability had been assumed on a valuation as great as that now alleged, a higher rate of freight would have been charged. The rate of freight is indissolubly bound up with the valuation."

In the case of *Western Union Telegraph Co. vs. Esteve Bros. & Co.*, 256 U. S. 566, at page 572, it is said:

"Uniformity demanded that the rate represent the whole duty and the whole liability of the company. It could not be varied by agreement; still less could it be varied by lack of agreement. The rate became, not as before a matter of contract by which a legal liability could be modified, but a matter of law by which a uniform liability was imposed. Assent to the terms of the rate was rendered immaterial, because when the rate is used, dissent is without effect. This principle was established in cases involving the limitation upon a carrier's liability for baggage by *Boston & Maine Railroad vs. Hooker*, 233 U. S. 97, and *Galveston, Harrisburg & San Antonio Ry. Co. vs. Woodbury*, 254 U. S. 357."

And again at page 573:

"It is true that a railroad rate does not have the force of law unless it is filed with the Commission. But it is not true that out of the filing of the rate grows the rule of law by which the terms of this lawful rate conclude the passenger. The rule does not rest upon the fiction of constructive notice. It flows from the requirement of equality and uniformity of rates laid down in paragraph 3 of the Act to Regulate Commerce. Since any deviation from the lawful rate would involve either an undue preference or an un-

just discrimination, a rate lawfully established must apply equally to all, whether there is knowledge of it or not."

Again, in *P. C. C. & St. Louis Ry. Co. vs. Fink*, 250 U. S. 577, this Court said:

"However this may be, in our view the question must be decided upon consideration of the applicable provisions of the statutes of the United States regulating interstate commerce. The purpose of the Act to Regulate Interstate Commerce, frequently declared in the decisions of this Court, was to provide one rate for all shipments of like character, and to make the only legal charge for the transportation of goods in interstate commerce the rate duly filed with the Commission. In this way discrimination is avoided, and all receive like treatment, which it is the main purpose of the Act to secure."

To allow the shipper who had stated a value and taken a corresponding rate to recover more than the value adjusted to the rate would be to create that very discrimination which Section 6 of the Interstate Commerce Act was aimed to prevent and would defeat the primary purpose of the Act itself.

In the *Robinson* case (*Atchison, Topeka & Santa Fe R. R. vs. Robinson*, 233 U. S. 173), this Court was asked to permit recovery for full actual value in the face of the fact that a lower value had been stated and the proper rate applied thereto. It was said on behalf of the shipper that a prior existing oral contract had been made in which no valuation had been stated. This Court said:

"To maintain the supremacy of such oral agreement would defeat the primary purposes of the Interstate Commerce Act, so often affirmed in the decisions of this Court, which are to require the equal treatment of all shippers and the charging of but one rate to all, and that the one filed as required by the Act."

It is submitted then that as the liability is limited to the value stated as the rate basis upon the ground of estoppel

and as in the instant case a value was named which did form the rate basis recovery cannot be had after the loss has occurred beyond this stated value; and this is true, irrespective of any contract or agreement by the shipper that recovery should be so limited. To decree otherwise would be to open the door to the very abuses at which the Interstate Commerce Act was aimed.

SUMMARY

It would appear, therefore, in the instant case that the shipper had agreed, in writing, upon a valuation and that the carrier, who maintained alternate rates, had applied that rate which alone was the lawful rate; that it is presumed to have been carrying on its business lawfully, and it follows that being required to publish its rate schedules, it had done so, and that the shipper and carrier alike were bound thereby. And again, relying upon the presumption that it lawfully conducted its business, and nothing to the contrary appearing, it is entitled to the further presumption that the Interstate Commerce Commission had either authorized or required it to maintain these alternate rates. That these things concurring, the requirement of the Second Cummins Amendment respecting limitation of liability has been met, and it is not incumbent upon petitioner or any carrier under similar circumstances to prove the purpose for which the shipper agreed or declared the value or that he knowingly and understandingly did so for the purpose of obtaining a lower rate, as was held by the state appellate court, but, on the other hand, the law will presuppose the purpose of the declaration of value and will invoke the doctrine of estoppel to hold recovery to the value to which the rate is tied.

IT WAS ERROR FOR THE TRIAL COURT TO EXCLUDE THE RATE SCHEDULES

It will be borne in mind that the petitioner offered to

introduce into evidence at the trial copies of its rate schedules of file with the Interstate Commerce Commission. For this purpose it offered duly certified copies of the same under the hand and seal of the Secretary of the Commission. These schedules were rejected by the trial judge *ex mero motu*, the Court holding that these rate schedules were immaterial and irrelevant to any issue then being tried.

This Court has held that to be error. These same rate schedules, properly certified, were offered in evidence at the trial of the case of *Byers vs. Southern Express Company*. They were rejected by the trial judge. When that case finally came to this Court (*Southern Express Co. vs. Byers*, 240 U. S. 612), Mr. Justice McReynolds said:

"It was plain error to exclude the rate schedules."

In the later case of *New York Central & Hudson River Railroad Co. vs. Beaham*, *supra*, the rate schedules of the carrier were offered and were rejected by the lower court. And again this Court, speaking through Mr. Justice McReynolds, said:

"In order to determine the liability assumed for baggage it was proper to consider applicable tariff schedules on file with the Interstate Commerce Commission; and the carrier had a federal right not only to a fair opportunity to put these schedules in evidence but also when before the court they should be given due consideration."

Yet these schedules were called irrelevant and immaterial evidence in the case at bar and neither the Georgia Court of Appeals nor the Supreme Court of the State has reversed the lower court's finding in this respect. It is true that the Court of Appeals decided the case by assuming that all that could have been proved by the rate schedules was duly proved and doubtless the state Supreme Court followed that line of reasoning. Nevertheless, this Court has twice suggested the question that it may be necessary to put these rate schedules in evidence before the carrier can effectually limit its liability.

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See the *Byers* and *Beaham* cases, cited *supra*.

CONCLUSION

It is submitted, therefore, that the petitioner has been subjected to a liability against which it is protected by the receipt issued to the shipper and by the Second Cummins Amendment. It is respectfully urged that the holding of the state appellate court, which permits recovery for full actual loss is error and that for that error and for the error lying within the trial court's action, in refusing the rate schedules, there should be a reversal of the judgment of the Supreme Court of Georgia.

Respectfully submitted,

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